

**State of Louisiana**

**REQUEST FOR PROPOSALS**

for Energy Savings Performance Contracting Services

for

*Louisiana Department of Public Safety and Corrections  
Corrections Services*

*November 3, 2008*

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## REQUEST FOR PROPOSALS

### Energy Savings Performance Contracting Services for

#### *Louisiana Department of Public Safety and Corrections - Corrections Services*

### **INTRODUCTION**

**Louisiana Department of Public Safety and Corrections - Corrections Services** (hereinafter referred to as **User Agency**) seeks proposals from interested Energy Services Companies (ESCOs) to conduct a technical energy audit of facilities and implement an Energy Performance Contract, in order to identify and implement capital improvements to reduce energy, operational and related costs in facilities such that annual cost savings are applied to annual payments for improvements.

### **OVERVIEW**

User Agency seeks to maximize energy cost savings and related costs in order to pay for facility upgrades and services.

Services and capital improvements will be financed through an Energy Savings Performance Contract which:

- incurs no initial capital costs (with option for User Agency to provide initial capital if desired)
- achieves significant long-term cost savings
- achieves a guarantee for cost savings
- maintains consistent and reasonable levels of occupant comfort
- maintains consistent levels of building functionality
- captures additional benefits that may directly result from energy-related services and capital improvements, such as environmental protection, hazardous materials disposal or recycling, improved occupant comfort, reduced maintenance needs, improved indoor air quality, additional building improvements, etc.

The RFP and contracting process has four phases:

- RFP Phase: Through this RFP, an ESCO will be selected based on written proposals, interviews with top candidates and a final reference check.
- Contract Negotiation Phase: A Technical Energy Audit is finalized and the Project will be developed with the selected ESCO to define the project scope, cost and financial terms. Upon satisfactory results of the Technical Energy Audit, an Energy Saving Performance Contract will be developed to implement the negotiated and recommended projects.
- Construction/Implementation/Financing Phase: The ESCO provides financing or facilitates financing of the project through its ability to help procure financing. Through the negotiated Energy Saving Performance Contract, the ESCO provides design services, procures equipment to implement the contracted retrofit projects and manages the construction process.

- Commissioning/Guarantee/Monitoring Phase: Upon completion of construction, the ESCO will provide a variety of services to ensure savings are met, such as a savings guarantee, staff training, follow-up monitoring, and contract maintenance services.

### **ESCO SERVICES**

#### **RFP Phase**

ESCO must have the demonstrated capability in engineering and management to provide a broad range of services including the ability to evaluate and provide the projects and technologies described in the “DESIRED PROJECTS” section of this document. Services may include but are not limited to the following:

- Mechanical Systems: Heating, ventilating and air conditioning (HVAC) systems, energy management and control systems, domestic hot water systems, distribution systems, etc.
- Plants: Distribution systems, cogeneration systems, etc.
- Lighting systems: Indoor and outdoor lighting systems, lighting controls, day lighting strategies.
- Building envelope systems: Windows, insulation, weatherization, etc. (It is recognized that window replacements are rarely cost-effective, but could be considered as part of a comprehensive plan.)
- Specialty Systems: laundry equipment, kitchen equipment, pool systems, renewable energy systems.
- Water and Sewage Systems: Automatic controls, low-flow faucet aerators, low-flow toilets, cooling tower modifications, pool covers, and irrigation system controls or modifications.
- On-site Electric Generation: Cogeneration, micro-turbine generation, and other available technologies.

#### **Contract Negotiation Phase**

- technical energy audit to evaluate costs and savings of a variety of energy-saving measures
- project development plan including financial analysis

#### **Construction/Implementation/Financing Phase**

- design services
- equipment procurement
- construction management
- hazardous waste disposal or recycling
- financing capability or ability to help find financing.

#### **Commissioning/Guarantee/Monitoring Phase**

- commissioning
- continuing operations and maintenance for all improvements
- staff training on routine maintenance and operation of systems
- training of occupants
- performance and cost guarantee of savings
- monitoring and verification for measurement and reporting of the performance and savings from improvements
- analysis and application for Energy Star Label
- monitoring and reporting of emissions reductions
- maintaining long-term, high-efficiency performance of buildings

**BUILDINGS AND FACILITIES**

Facilities identified for this work are listed below. User Agency reserves the right to reduce the scope of work or conduct work in phases.

**List of Buildings:**

		ESTABLISHED		NUMBER	FACILITY	
	SITE	AS STATE	FACILITY	OF	SQUARE	APPROXIMATE
INSTITUTION	CODE	FACILITY	AGE	BUILDINGS	FOOTAGE	ACREAGE
HEADQUARTERS	2-17-040	1936	72	13	222,600	6.0
PHELPS CORRECTIONAL CENTER	5-06-014	1957	51	113	365,219	681.0
LOUISIANA STATE PENITENTIARY	2-63-003	1901	107	533	2,306,782	13,678.0
AVOYELLES CORRECTIONAL CENTER	6-05-013	1989	19	73	430,227	1,162.3
LOUISIANA CORR INST FOR WOMEN	2-24-003	1973	35	38	309,406	200.0
WINN CORRECTIONAL CENTER	6-64-014	1990	18	65	449,983	1,200.0
ALLEN CORRECTIONAL CENTER	5-02-008	1990	18	53	370,448	857.7
DIXON CORRECTIONAL INSTITUTE	2-19-002	1950	58	131	499,615	2,652.0
DABADIE CORRECTIONAL CENTER	6-40-043	1977	31	42	108,583	15.0
ELAYN HUNT CORRECTIONAL CENTER	2-24-004	1978	30	113	622,912	4,270.0
DAVID WADE CORRECTIONAL CENTER	7-14-004	1979	29	80	410,901	1,512.0
FORCHT WADE CORRECTIONAL CENTER	7-09-083	1970	38	44	153,132	121.0
STEVE HOYLE REHABILITATION CENTER	8-33-015	1999	14	34	180,266	35.0
RAYBURN CORRECTIONAL CENTER	2-59-007	1983	25	68	298,524	1,066.0
TOTALS FOR DEPARTMENT				1,400	6,728,598	27,456.0

**DESIRED PROJECTS**

	LIGHTING RETROFITS	AIR CONDITIONING RETROFITS	REFRIGERATION EQUIPMENT	HEATING SYSTEM	WATER CONSERVATION	TRANSPORTATION	ALTERNATIVE ENERGY SOURCES	DIGITAL TEMPERATURE CONTROLS	WASTE DISPOSAL
INSTITUTION									
HEADQUARTERS	X	X	X	X	X	X	X	X	X
PHELPS CORRECTIONAL CENTER	X	X	X	X	X	X	X	X	X
LOUISIANA STATE PENITENTIARY	X	X	X	X	X	X	X	X	X
AVOYELLES CORRECTIONAL CENTER	X	X	X	X	X	X	X	X	X

## RFP for Energy Savings Performance Contracting Services

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INSTITUTION	LIGHTING RETROFITS	AIR CONDITIONING RETROFITS	REFRIGERATION EQUIPMENT	HEATING SYSTEM	WATER CONSERVATION	TRANSPORTATION	ALTERNATIVE ENERGY SOURCES	DIGITAL TEMPERATURE CONTROLS	WASTE DISPOSAL
LOUISIANA CORR INST FOR WOMEN	X	X	X	X	X	X	X	X	X
WINN CORRECTIONAL CENTER	X	X	X	X	X	X	X	X	X
ALLEN CORRECTIONAL CENTER	X	X	X	X	X	X	X	X	X
DIXON CORRECTIONAL INSTITUTE	X	X	X	X	X	X	X	X	X
DABADIE CORRECTIONAL CENTER	X	X	X	X	X	X	X	X	X
ELAYN HUNT CORRECTIONAL CENTER	X	X	X	X	X	X	X	X	X
DAVID WADE CORRECTIONAL CENTER	X	X	X	X	X	X	X	X	X
FORCHT WADE CORRECTIONAL CENTER	X	X	X	X	X	X	X	X	X
STEVE HOYLE REHABILITATION CENTER	X	X	X	X	X	X	X	X	X
RAYBURN CORRECTIONAL CENTER	X	X	X	X	X	X	X	X	X

### **RFP PHASE**

The following paragraphs present a brief outline of the performance contracting RFP process. The complete text of the Rules governing the RFP process and selection of ESCO's can be seen in **Attachment L: Title 34, Performance Contracting Rules**.

**Advertising the RFP:** The Commissioner of Administration or his designated agent must provide written consent to advertise. The RFP and advertisement must contain the name and address of the user agency, and the date, time and place by which the proposals must be received. Per applicable legislation, the following rules apply to advertising the RFP:

- The RFP must be advertised for 30 days in the official journal of the state and in one or more newspapers of general circulation.
- Written notice must be provided to persons, firms, or corporations who are known to be in a position to furnish such services (per La RS 39:1503).
- An announcement must be posted on the LaPAC (Office of State Purchasing) website.

**Site Visit:** A mandatory Pre-Proposal meeting will be held at a time and place designated by the User Agency to answer questions and establish building access procedures. The meeting will be held prior to the proposal due date at the time and place specified on the **Pre-Proposal Meeting/Site Visit Registration** form. Knowledgeable representatives will be available to answer questions about operation and maintenance practices, problems, concerns and future plans. To see more details and register to attend the meeting, fill-out the **Pre-Proposal Registration Form** in this RFP and return it to the User Agency as directed. Registration is not required for attendance. Proposers must sign an attendance sheet to indicate their presence at the meeting.

**Preparation and Review of Written Proposals:** Proposals must be prepared as described in **Attachment E: ESCO Response**. Proposals prepared in response to the RFP must be submitted to the User Agency by the time and date specified in **Attachment D: Proposed Project Schedule**. The User Agency will review proposals that are timely received and submit all that are determined responsive and responsible, along with the results of their review, to Facility Planning and Control (FPC) without making a final selection of ESCO. The evaluation factors that will be used when reviewing proposals are identified in **Attachment F: Evaluation Criteria**. The state reserves the right to reject for good and sufficient reason all proposals received as a result of this RFP.

FPC, as well as an independent consultant when deemed necessary, will evaluate all proposals for the Performance Contract submitted by the User Agency. After completing its evaluation, FPC will forward to the Commissioner of Administration or his designated agent the written evaluation(s) of the submitted proposals prepared by FPC and the independent consultant, if any, along with the results of the review of the submitted proposals by the User Agency.

**Interviews:** Interviews (oral presentations) may be required as a part of the proposal evaluation process. The interview provides the opportunity for the proposer to address questions and to more fully describe how its approach to this project satisfies the evaluation criteria. ESCO representatives at the interview should include individuals who will be *key* points of contact and have *major* responsibility for contract negotiation, engineering and design, construction management and follow-up monitoring. Each interview may be recorded.

**Final Selection:** Final Selection of the ESCO whose proposal is most advantageous to the State of Louisiana will be made by the Commissioner of Administration, or his designated agent, taking into consideration all of the evaluation factors set forth in the RFP, as well as any evaluations or recommendations provided by the User Agency, Facility Planning and Control and independent consultant, if any. After completing his review of proposals, the Commissioner of Administration or his designated agent will provide written notification to the User Agency that it may issue a Notice of Intent to Award a performance contract to a specified ESCO or that he has not consented to the award of a performance contract.

### **CONTRACT NEGOTIATION PHASE**

Following selection, User Agency will issue a Notice of Intent to Award to the successful proposer. Then, following successful completion of the Technical Energy Audit and finalization of Project scope, an Energy Savings Performance Contract will be negotiated to implement the projects, as given in **Attachment H: Model Energy Savings Performance Contract** (also see **Attachment C: Special Contract Terms and Conditions**).

The State of Louisiana prohibits entering into a performance contract with duration, including all optional renewal terms, that exceeds the weighted average useful life of the assets being financed. Therefore, the Technical Energy Audit must include an estimate of the acquisition cost weighted average useful service life of the recommended ECMs showing the method of calculation.

**RFP for Energy Savings Performance Contracting Services**  
**Attachment A: Pre-Proposal Meeting/Site Visit Registration Form**

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<b>FAX RESPONSE TO:</b> Billy Breland 225-342-7455
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**ATTACHMENT A:**  
**PRE-PROPOSAL MEETING/SITE VISIT REGISTRATION**  
**For ESCOs Responding to RFP**

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*Louisiana Department of Public Safety and Corrections - Corrections Services*  
*504 Mayflower Street*  
*Baton Rouge, LA 70802*

Louisiana Department of Public Safety and Corrections - Corrections Services invites you to attend a pre-proposal meeting for Energy Saving Performance Contracts for the above facility. This meeting is **mandatory** for all ESCOs planning to submit a proposal in response to this RFP.

**DATE:** November 20, 2008

**TIME:** 2:00 PM C.S.T.

**DURATION:** 2 Hours

**LOCATION:** *Louisiana Department of Public Safety and Corrections*  
*Corrections Services Main Office*

If there are any questions, contact: Billy Breland 225-342-7442

- |   |
|---|
| <input type="checkbox"/> <i>Yes, I plan to attend the pre-proposal meeting.</i> |
| <input type="checkbox"/> <i>I acknowledge that this meeting is mandatory.</i>   |

*Name:* \_\_\_\_\_

*Company Name:* \_\_\_\_\_

*Mailing Address:* \_\_\_\_\_

\_\_\_\_\_

*Phone:* \_\_\_\_\_ *Fax:* \_\_\_\_\_

*E-mail:* \_\_\_\_\_



## **ATTACHMENT B: SPECIAL INSTRUCTIONS AND REQUIREMENTS**

**Cost Estimates.** The proposal must include estimates of savings for each measure each year. Provide a separately itemized list of costs and savings associated with each proposed energy cost savings measure (ECSM). Also, the cost estimate for each measure must include an estimate of all costs including design, engineering, installation, maintenance, repairs and debt services as well as other categories presented in the stated cost in the RFP.

**Annual Savings Estimates:** The utility and operational and maintenance cost savings for all measures must be estimated for each year during the contract period.

**Annual Energy Cost Escalation Rate:** The Annual Energy Cost Escalation Rate to be used in calculating annual energy cost savings for the contract that results from this solicitation is fixed at **2 (two)** percent.

**Allowable Payment Sources:** Payment sources to support the capital investment payments are as defined in La. R.S. 39:1496.1 and LAC 34:V.Chapter 1, Subchapter A, Section 6.a

**Performance and Payment Bond:** The ESCO shall provide a 100% performance and 100% payment bond in the amount of all labor, materials, and equipment installed for the User Agency prior to the execution of the Contract.

**Administrative Fee:** At the time a performance contract is executed, the contracting ESCO shall submit a certified or cashier's check, payable to the Commissioner of Administration or his designated agent, in a sum equal to **2-1/2 %** of the total value of the performance contract.

**Equipment Compatibility or Standardization.** All equipment or systems installed that are comparable to similar equipment or systems at the facility(ies), shall provide functions, features and operability that are, at a minimum, equal to the existing equipment and systems. Installed equipment and systems shall meet all standards for such equipment established by the latest version of Facility Planning and Control's "Instructions to Designers & Procedure Manual." Equipment shall be selected so as to minimize, to the extent practical, the number and type of service parts and materials needed on site and shall consider the future likelihood of availability during the full term of the contract. This applies to all main mechanical, electrical and control equipment.

**Contract Term.** As described in statute: RS 39:1496.1

**Excess Savings.** Annual cost savings beyond the guaranteed minimum savings will be retained by User Agency, and shall not be allocated to shortfalls in other years.

**Measurement and Verification Methodology:** The ESCO shall use the most recent version of the accepted industry standard of the *International Performance Measurement and Verification Protocol* for reporting to User Agency.

**Reporting:** Upon request by User Agency, by the Commissioner of Administration or his designated agent or by the Legislative Auditor of the State of Louisiana (Legislative Auditor), an

## **RFP for Energy Savings Performance Contracting Services**

### **Attachment B: Special Instructions and Requirements**

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ESCO shall provide any working documents, accounting records or other materials relating to costs, pricing or any other aspect of the ESCO's performance pursuant to a performance contract. Documents, records or other materials provided by an ESCO shall be subject to review and verification by User Agency, by the Commissioner of Administration or his designated agent, by the Legislative Auditor, or by an independent third party selected by User Agency, by the Commissioner of Administration or by the Legislative Auditor.

The ESCO shall produce and present to User Agency, on an annual basis, performance reports for this Contract. The ESCO's reports to User Agency shall include at a minimum the following:

- Name of User Agency
- ESCO's name and address
- Whether the payment obligation under the performance contract is either:
  - Set as a percentage of the annual energy cost savings attributable to the services or equipment under the performance contract; or
  - Guaranteed by the ESCO to be less than the annual energy cost savings attributable to the services or equipment under the performance contract
- Total annual savings guaranteed by the ESCO
- Total amount User Agency is required to pay under the performance contract and the term of the contract
- Total amount paid to date by User Agency and the amount paid each year to date under the performance contract.
- Any costs paid by User Agency which were associated with the set-up or maintenance of the performance contract or with repair or maintenance of the equipment used under the performance contract
- The annual cost to User Agency of energy or other utilities beginning two years prior to operation of the performance contract and during the operation of the performance contract
- The annual energy cost savings each year, shown also as a percentage of the annual amount to be paid by User Agency under the performance contract.
- Annual maintenance cost savings for each year. Maintenance savings means operating expenses eliminated and future capital replacement expenditures avoided by User Agency as a result of new equipment installed or services performed by the ESCO.

**Disclosure of Subcontractors and Other Parties:** The ESCO shall furnish to User Agency, FP&C, and the Legislative Auditor's Office a list of names of the ESCO's associates (i.e., all contractors, sub-contractors, consultants, financing entities, and other professional service providers) that it has used, has under contract, or plans to use in fulfilling the terms of a Contract related to this RFP.

## **ATTACHMENT C: SPECIAL CONTRACT TERMS AND CONDITIONS**

The following Special Contract Terms and Conditions will be an integral part of the subsequent contracts and are presented here to emphasize their importance. The Model Energy Savings Performance Contract is included as a sample only and may not yet incorporate all of the below requirements.

- A. The ESCO shall provide 24-hour emergency repair service on any equipment installed by the ESCO which is critical to the operation of the facilities. The ESCO shall also provide training in the proper operation and maintenance of said improvements and equipment to User Agency's in-house maintenance staff through the term of the contract and shall train User Agency's personnel at termination of the contract on proper maintenance procedures. This training shall take the form of the training classes and training videotapes as outlined in proposal.
- B. The standards of service provided for the facilities including heating, ventilation, air conditioning, temperature and humidity shall be in accordance with the requirements of the American Society of Heating, Refrigeration and Air Conditioning Engineers.
- C. The standards of service provided for the facilities in lighting shall be made in accordance with the recommended light levels as set forth by the Illuminating Engineering Society of North America Guidelines and the Louisiana Sanitary Code, whichever standard is more stringent.
- D. All engineering and design work related to the installation or modification of facilities shall be reviewed by the User Agency and Facility Planning before signing the contract for construction. All design documents shall be in accordance with Facility Planning and Control Instructions to Designers including all referenced guidelines and standards. All installation and construction work shall be performed by contractors licensed in the State of Louisiana.
- E. Key personnel assigned to this project by the ESCO and its subcontractors shall be subject to prior written approval of User Agency. Such approval shall not be unreasonably withheld.
- F. The ESCO shall be responsible for obtaining all permits and related permit fees associated with the Work and Services including appropriate code reviews including but not limited to the State Fire Marshal and Office of Public Health. The ESCO shall pay sales, consumer, use, and other similar taxes and shall secure and pay for the building permit and other permits and governmental fees, licenses, and inspections necessary for proper execution. User Agency shall be responsible for real estate and personal property taxes where applicable. User Agency shall be responsible for securing any necessary approvals, easements, assessments, or zoning changes.
- G. The ESCO shall provide a 100% performance and 100% payment bond in the amount of all labor, materials, and equipment installed for the User Agency.
- H. The ESCO shall present to User Agency, all warranties, shop drawings, operating manuals, schematics, etc., at the completion of equipment installation.
- I. The level of quality of lighting, temperature, comfort, and humidity shall in no case be compromised. User Agency shall survey and monitor certain areas for adherence to the level of performance at original installation. Any equipment failing to perform at the original level shall be replaced immediately.
- J. ESCO WILL NOT BE ALLOWED TO USE THE SALES TAX EXEMPT STATUS FOR USER AGENCY IN ORDER TO PURCHASE EQUIPMENT.

## **ATTACHMENT D: PROPOSED PROJECT SCHEDULE**

The following schedule is the proposed schedule, and may change during the project.

<b>ACTIVITY</b>	<b>DATE</b>
<b><u>RFP Phase</u></b>	
<b>Advertise and Issue RFP</b>	<b>November 3, 2008</b>
<b>Mandatory Pre-Proposal Meeting</b>	<b>November 20, 2008</b>
<b>Proposals Due</b>	<b>April 2, 2009</b>
<b>User Agency Review</b>	<b>User Agency will review all proposals within two business weeks of receipt following which responsive and responsible proposals will be forwarded to FPC.</b>
<b>FPC Review</b>	<b>To be completed within 60 days of receiving proposals and results of review from User Agency</b>
<b>Independent Consultant Review (if required)</b>	<b>To be completed within 60 days of receiving proposals and results of review from User Agency</b>
<b>Commissioner of Administration Review and ESCO Selection &amp; Notice of Intent to Award</b>	<b>To be completed within 60 days of receiving proposals and results of review from FPC.</b>
<b>Note: Reviews may be ongoing concurrently in order to minimize the time required to reach Contract Negotiation. The review process may include oral interviews with ESCOs and reference checks.</b>	
<b>Contract Negotiation &amp; Award</b>	<b>To be completed within 30 days of Notice of Intent to Award</b>
<b>Board approval (where required) and signature(s) to execute contract</b>	<b>1-3 weeks</b>
<b>Final approval by OCR</b>	<b>3 Weeks</b>

**RFP for Energy Savings Performance Contracting Services**  
**Attachment D: Proposed Project Schedule**

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<b>Installation</b>	<b>To be negotiated</b>
<b><u>Commissioning/Monitoring Phase</u></b>	
<b>Commissioning</b>	<b>To be negotiated</b>
<b>Monitoring</b>	<b>To be negotiated</b>
<b>Staff Training</b>	<b>To be negotiated</b>
<b>Other</b>	<b>To be negotiated</b>
<b>Proposed Contract Term</b>	<b>TBD, up to 20 years is allowed</b>

Note: This schedule is subject to change.

## **ATTACHMENT E: ESCO RESPONSE**

### **GENERAL INFORMATION**

Refer to “OVERVIEW” in the body of the RFP for an overview of the process.

For further information, please contact: Billy Breland, *Louisiana Department of Public Safety and Corrections - Corrections Services, 504 Mayflower Street, Baton Rouge, LA 70802 Phone: 225-342-7442, Email:bbreland@corrections.state.la.us*

#### **Due Date:**

Proposals must be *received* at the below address on or before April 2, 2009 by 2:00 pm C.S.T.  
Late proposals will not be accepted.

#### **Submit Proposal**

Prepare responses to “ESCO Profile & Approach to Project” (see following page).

Quantity: **10 (ten)**, including original.

Clearly mark one proposal as “**ORIGINAL**”.

#### **Delivery**

Postal Address:

To: Louisiana Department of Public Safety and Corrections - Corrections Services  
Attention: Suzanne Sharp

Mailing Address: Louisiana Department of Public Safety and Corrections - Corrections Services  
PROCRD Building 8, Second Floor, Room 226  
504 Mayflower Street  
Baton Rouge, LA 70802

Address for overnight or hand-delivery:

To: Louisiana Department of Public Safety and Corrections - Corrections Services  
Attention: Suzanne Sharp

Delivery Address: Louisiana Department of Public Safety and Corrections - Corrections Services  
PROCRD Building 8, Second Floor, Room 226  
504 Mayflower Street  
Baton Rouge, LA 70802

## **ESCO PROFILE & APPROACH TO PROJECT**

- *Answer all questions or state “N/A” if not applicable.*
- *Please number and re-state each subheading or question, followed by your response. This improves clarity and makes it much easier to evaluate your proposal.*
- *Number all pages.*

### **1. QUALIFICATIONS AND CAPABILITY**

#### **A. General Firm Information**

- 1) Type of Firm (corporation, partnership, sole proprietorship, joint venture)
- 2) Year Firm Established. Number of years your firm has been in business under its present business name
- 3) Other Firm Names. Indicate all other names by which your organization has been known and the length of time known by each name.
- 4) Parent Company. If applicable, state name, address, former name if applicable, tax identification number
- 5) Participating Division or Louisiana Branch Offices. State division or Louisiana branch offices that will participate in the development of the proposal, in its evaluation process, and/or in the conduct of any services provided (office name, address and number of full time personnel at each location).
- 6) Submittal. Submittal is for (parent company, subsidiary, division, branch office)

#### **B. Experience**

- 1) Years in Energy Business. State the number of years your firm has been involved in the energy-efficiency related business. State the number of years your firm has offered performance contracting services nationally and in the state of Louisiana.
- 2) Number and Value of Contracts. Indicate the dollar volume of energy savings performance contracts actually implemented by your firm, each year for the past 5 years. Indicate the associated dollar value. (NOTE: If this response is submitted by a branch office or division of a parent company, indicate the number of projects that have been managed directly by the specific branch or division.)
- 3) NAESCO Accreditation. Is your firm accredited by NAESCO? If so; Provide a copy of your current accreditation certificate from the National Association of Energy Service Companies (NAESCO) along with the accreditation letter explaining the relevance.
- 4) Contract Disputes. Has your firm or principles ever been involved in litigation, arbitration, cancellation, and/or nonappropriation of a Performance Contract? If so provide brief summary of details explaining. If not provide a statement stating so.

#### **C. Scope of Services**

- 1) Types of Services. Summarize the scope of services (auditing, design, construction, monitoring, operations, maintenance, training, financing, etc.) available from your firm.
- 2) Expertise in Systems. Describe your ability to offer services to upgrade HVAC, controls, lighting, renewables, pools, kitchen, laundry and other systems.



**RFP for Energy Savings Performance Contracting Services**  
**Attachment E: ESCO Response**

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- 3) Provision of Financing. Describe general ability and approach to help with financing. Describe ability to ensure low rates.
- 4) Provision of Insurance. Generally describe your capability to secure insurance policies.

**D. Financial Soundness**

- 1) Financial Statement. Attach your firm's most recent audited financial statement or annual report for each of the last two years.
- 2) Identify bonding agent by name, phone number and rating and letter of intent to bond.

**E. Attachments for "Qualifications and Capability of Firm" Section**

Label Attachments and list here including Attachment Name, Description and Location in RFP Response. Insert attachments here at the end of this section, or include elsewhere in a clearly marked location for easy reference.

**2. EXPERIENCE AND EXPERTISE**

**A. Project History.**

Using the attached standard form (**Attachment I: Project History Form**) identify and provide project references (not to exceed ten) that involve buildings similar in type, size or scope to the building(s) described in the technical appendices and in similar types of facilities.

If available, include as much of the following information as possible on each project (*no preferred format*):

**Project Identification.** Name of project owner, type of project (hospital, k-12 school, university, office building, etc.), location (city, state).

**Project Dates.** Actual construction start and end dates

**Project Size.** Number of buildings, total square footage, total contract amount and the total project capital cost.

**List of Improvements.** Type of retrofits and operational improvements related to energy, water and other cost savings.

**Guaranteed Savings.** State the amount of the guarantee (see **Attachment I: Project History Form**). Also describe how the guarantee functioned and if your firm was required to pay funds to meet the guarantee.

**Actual Annual Savings.** *State the actual annual energy, water and O&M savings (Therms, kWh, kW, Gallons). Also describe if savings were measured or stipulated. (See Attachment I: Project History Form)*

**Contract Terms.** Type of contract (shared-savings, lease purchase, guaranteed savings), contract term, and financing arrangement.

**Source of Funds.** Source of funds used for the project. If applicable, describe your firm's role in securing funds.

**Technical Design Personnel.** Include name(s) of primary technical design personnel.

**Project Schedule.** Indicate if the project was completed on schedule. If not, please explain.

**Comments.** *Comment on any special features, services, conditions, etc.*



**B. Personnel Information.**

- 1) Qualifications and Experience. Describe the number and quality of staff you currently have to conduct technical analysis, engineering design, construction management, construction, training and post-contract monitoring. Provide location, company and resumes of key personnel assigned to this project including Energy Engineer(s), Project Manager, Measurement & Verification Engineer and Service personnel. Key personnel shall not be removed or replaced without the approval of User Agency.
- 2) Subcontractors. Describe the nature of work generally conducted by subcontractors. Provide names, address and phone numbers and anticipated responsibility of any subcontractors for this project.

**C. References**

*Names and contact information of User Agency(s)' representatives who can serve as references.*

**3. TECHNICAL APPROACH**

**A. Audit**

- 1) Technical Site Analysis. Describe your general approach to auditing a facility. What is involved? How is User Agency involved? Methodical approach? Level of expertise involved? Information and resources needed from User Agency?
- 2) Engineering Design. Describe your firm's approach to the technical design of this project. Describe standards of comfort and functionality that are generally used for light levels, space temperatures, ventilation rates, etc. in the intended facilities. Also describe how those standards will be maintained throughout the contract term.
- 3) Sample Technical Calculations. Submit a sample of technical calculations conducted by your firm for this proposal.

**B. Measurement & Verification Methodology**

- 1) Describe your approach to constructing a Measurement and Verification Plan and any guidelines adhered to. The use of the accepted industry standard of the *International Performance Measuring and Verification Protocol* is required.
- 2) Describe in detail the methodology your firm normally uses to compute baseline of energy and water use as well as performance. Describe the method(s) used to adjust the energy, water and O&M baseline due to such factors as weather and facility use changes. Describe factors that would necessitate adjustment. Address issues regarding buildings projected to have substantial changes in use.
- 3) List all procedures, formulas and methodologies including special metering or equipment, which your firm will use to calculate energy, water and O&M savings. Include assumptions made in the calculations and describe the procedure to assign dollar values to the savings. Include energy savings as well as maintenance or material savings.

- 4) Describe your firm's procedures and schedule for measuring financial performance of projects. Include a sample report of the format that will be used on this project. Describe how the guarantee provisions work in the event that project results vary from projections.
- 5) Does the guarantee cover the annual monitoring & verification and maintenance contract? Describe in general the recommended M&V plan for the project in this proposal

**C. Attachments for "Technical Approach" Section**

Label Attachments and list here including Attachment Name, Description and Location in RFP Response. Insert attachments here at the end of this section, or include elsewhere in a clearly marked location for easy reference.

**4. PERFORMANCE CONTRACTING APPROACH**

**A. Approach**

- 1) Differentiation of Your Firm. Describe particular characteristics of how your firm approaches performance contracting.
- 2) Management. Briefly describe your firm's approach to management.
- 3) Model Performance Contract Agreement. Describe any modifications you recommend or require regarding the model Energy Savings Performance Contract. Note that **Attachment C: Special Contract Terms and Conditions** identifies specific terms that will be incorporated into the model contract agreement.

**B. Other Services**

- 1) Training Provisions. Describe your firm's capabilities in providing technical training for facility personnel and experience on past projects. Describe your firm's involvement in developing training manuals for facility staff.
- 2) Maintenance Contract. Describe the types of services that can be included in the maintenance contract. Comment on whether User Agency's maintenance staff can perform some of these duties if desired, and describe any impact on the guarantee. (These duties could include programming and maintaining the control system, installing lighting retrofits, maintaining HVAC equipment, etc.). Describe your firm's flexibility in terminating the guarantee. Describe the required length of the maintenance contract and the relationship with the guarantee in the event that User Agency chooses to terminate the maintenance contract prior to the end of the performance contract.
- 3) Project Financing. Describe your firm's preferred approach to providing or arranging financing for the proposed project. Describe the mechanics of the financing arrangement, including equipment ownership, responsibilities/liabilities of each party, security interest required and any special terms and conditions that may be associated with the financing of this project. Please comment on how you would work with User Agency to utilize tax-exempt financing if appropriate, or other methods to keep financing costs to a minimum.

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**Attachment E: ESCO Response**

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- 4) Energy Star Label. Describe your willingness and experience/capability to provide services and prepare an application to achieve the Energy Star Label on retrofitted buildings.
- 5) Emissions Reductions Reporting. Describe your willingness and experience/capability to calculate and report emissions reductions.

**C. Construction Issues**

- 1) Environmental Liability. State your firm's position with respect to the acceptance of liability for any hazardous materials encountered during the course of the project. If the firm is willing to accept any level of environmental liability, state the level and provide a cost analysis.
- 2) Equipment Ownership and Service Responsibility. Describe the status of equipment ownership and service responsibility at contract expiration.
- 3) Warranties. State the nature and term of typical warranties.

**D. Standardized Contracts**

Confirm that you will use the **(Attachment H): Model Energy Savings Performance Contract** as the format for this contract. State objections you may have, if any.

**E. Attachments for "Performance Contracting Approach" Section**

Label Attachments and list here including Attachment Name, Description and Location in RFP Response. Insert attachments here at the end of this section, or include elsewhere in a clearly marked location for easy reference.

**5. SITE-SPECIFIC SCOPE**

**A. Project Scope**

- 1) Types of Services. Summarize the scope of services (auditing, design, construction, monitoring, operations, maintenance, training, financing, etc.) offered for this project.
- 2) Potential Projects. Based on your preliminary assessment of the information provided, describe any equipment modifications, installations or replacements at the facility that your firm would consider installing as a part of this project. Address energy, water and operation and maintenance opportunities. Also describe any special features, renewable technologies, or advanced technologies that might be applicable. Describe any special features or services associated with your proposed improvements that would add value to User Agency. Describe your approach to achieve compatibility (such as open systems) and/or standardization of equipment in the facilities to be addressed.
- 3) VFA Priority 4 Energy Needs. The ESCO must show that all needs identified in the VFA, Inc. Facility Assessment as Priority 4 and Category "Energy" have been considered for inclusion in the Performance Contract.
- 4) Benefits. Describe the specific benefits your firm can offer.

**B. Project Management**

- 1) Management Approach. Briefly describe your firm's approach to managing this project.
- 2) Construction Management. Describe how your firm would work with current building management and maintenance personnel in order to coordinate construction and avoid conflicts with the building's operation and use. Describe your flexibility and/or any limitations regarding possible User Agency activities such as: management of additional energy and water projects, monitoring of installation and performance of ESCO projects, integration of other identified capital needs with ESCO projects which may or may not contain energy and water saving opportunities.
- 3) Project Schedule. Propose a preliminary project schedule

**C. Operational and Maintenance Responsibilities**

- 1) Operations and Maintenance. Describe any major changes in operations or maintenance of the facilities that your firm foresees based on the information provided. Briefly describe the maintenance responsibilities of your firm and User Agency. Describe how your firm would provide appropriate training in operations and maintenance of installed improvements.

**D. Attachments for "Site Specific Approach" Section.**

Label Attachments and list here including Attachment Name, Description and Location in RFP Response. Insert attachments here at the end of this section, or include elsewhere in a clearly marked location for easy reference.

**6. FINANCIAL ANALYSIS**

- A.** Provide a financial analysis to model the project in this proposal incorporating energy, operational and capital avoidance savings; Turnkey project costs for implementation; Service costs including maintenance, monitoring and Measurement and Verification; and financial transaction costs. Identify all escalations on energy and operational savings and service costs.
- B. Other Costs:** Describe other costs such as maintenance and monitoring agreements and describe how they will be applied. Also state whether these are annual costs and if they are required each year of the contract.
- C.** ESCO may offer alternative financing options.
- D.** Provide a separate list of costs and savings associated with each proposed energy cost savings measure (ESCM).
- E. Cost Estimates:** The proposal must include estimates of savings for each measure each year. Provide a separately itemized list of costs and savings associated with each proposed energy

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cost savings measure (ECSM). Also, the cost estimate for each measure must include an estimate of all costs including design, engineering, installation, maintenance, repairs and debt services as well as other categories presented in the stated cost in the RFP.

**F. Annual Savings Estimates:** The utility and operational and maintenance cost savings for all measures must be estimated for each year during the contract period.

**G. Attachments for “Financial Analysis” Section**

Label Attachments and list here including Attachment Name, Description and Location in RFP Response. Insert attachments here at the end of this section, or include elsewhere in a clearly marked location for easy reference.

## **ATTACHMENT F: EVALUATION CRITERIA**

The criteria listed below will be used to evaluate written proposals and the subsequent interviews. The weight given to the individual criteria during the evaluation process is listed for each one.

Proposals should include all necessary information that is pertinent to these evaluation criteria. Additional information required for proper assessment of proposals may be requested from the ESCO at the discretion of User Agency.

### **1. TECHNICAL ANALYSIS (Weight: 70%)**

#### **A. QUALIFICATIONS AND CAPABILITY**

- 1) **General Firm Information.**
- 2) **Experience of Firm.** General experience in energy-related and performance contracting services.
- 3) **Scope of Services.** Comprehensiveness of management, maintenance and monitoring services offered.
- 4) **Financial Soundness.** Financial soundness and stability of the ESCO. Completeness and strength (financial viability) of most recent annual financial statements.

#### **B. EXPERIENCE AND EXPERTISE**

- 1) **Project History.** Quality of past projects completed with respect to scope and documented savings.
- 2) **Personnel Information.** Qualifications and relevant experience of the staff in engineering, project management and other areas of importance.
- 3) **Reference Checks.** To include litigation, arbitration, cancellation and/or nonappropriation of a performance contract.

#### **C. TECHNICAL APPROACH**

- 1) **Audit.** Overall approach including engineering design and sample calculations
- 2) **Measurement and Verification Methodology -** Overall approach; Reasonableness of methodologies to determine the baseline and savings. General plan for proposed project.

#### **D. PERFORMANCE CONTRACTING APPROACH**

- 1) **Approach.** Overall approach to performance contracting, and needed contract adjustments.
- 2) **Other Services.** Full range of services and flexibility in applying those services.
- 3) **Construction Issues.** Ways of handling environmental liabilities, warranties and equipment service.
- 4) **Standardized Contracts.** Willingness to use state-approved contracts.

#### **E. SITE SPECIFIC APPROACH**

**RFP for Energy Savings Performance Contracting Services**  
**Attachment F: Evaluation Criteria**

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- 1) **Project Scope for This Project.** Understanding of existing building conditions, systems and operation and maintenance projects. Responsive to strategies in adapting control strategies, equipment and maintenance practices in response to changes in utility rates, technology, and building conditions in order to enhance project performance. Comprehensiveness and clarity of the technical approach to this project based on improvements likely to be included. Relevance and benefits of proposed retrofits for these facilities.
- 2) **Project Management for This Project.** Management approach and relevant qualifications of key personnel assigned to the project involved in technical auditing and design, project management and construction, with respect to the size, scope and building type of this project.
- 3) **Operational and Maintenance Responsibilities.** Operation and maintenance approach, approach to compatibility/openness/standardization of equipment, standards of comfort and provision of insurance.

**2. FINANCIAL ANALYSIS (Weight: 20%)**

**A. Evaluate by weighing:**

- 1) Cost to benefits analysis (project & services)
- 2) Comprehensiveness of scope (Maximized project potential)
- 3) Reasonableness of savings (energy and operational)
- 4) Cashflow Positive

**3. SMALL ENTREPRENEURSHIP (HUDSON INITIATIVE) (Weight: 10%)**

**A. Evaluate by weighing:**

- 1) Documented good faith effort to use one or more certified small entrepreneurs as subcontractors
- 2) Dollar value of certified small entrepreneurship participation
- 3) Is proposer is a certified small entrepreneurship?



## **ATTACHMENT G: SMALL ENTREPRENEURSHIP (HUDSON INITIATIVE) PROGRAM**

This procurement has been designated as suitable for small entrepreneurship participation.

The State of Louisiana's Small Entrepreneurship (Hudson Initiative) Program, is designed to provide additional opportunities for Louisiana-based small entrepreneurs (sometimes referred to as SE's) to participate in contracting and procurement with the state. A certified small entrepreneurship is one that has been certified by the Louisiana Department of Economic Development. All eligible vendors are encouraged to become certified. Qualification requirements and online certification are available at <https://www.ledsmallbiz.com/seinformation.htm>.

Proposers are encouraged to use small entrepreneurs where sub-contracting opportunities exist. Ten percent (10%) of the total evaluation points on this RFP are reserved for proposers who are themselves a certified SE or who have made a good faith effort to use one or more SE's as subcontractors.

Written notification to certified small entrepreneurs is the preferred method to inform certified SE's of potential subcontracting opportunities. A current list of small entrepreneurs, which have been certified by the Louisiana Department of Economic Development, may be accessed from the State of Louisiana Procurement and Contract Network (LaPAC) by clicking "Search for Registered Vendors" at <http://wwwsrch2.doa.louisiana.gov/osp/lapac/Vendor/VndPubMain.asp>. You may then determine the search criteria (i.e. alphabetized list of all certified vendors, by commodities, etc.), and select "SmallE". Copies of notification to at least three (or more) certified SE's will satisfy the notification requirements. Notification must be provided to the certified SE's by the proposer in writing no less than five working days prior to the date of proposal deadline. Notification must include the scope of work, location to review plans and specifications (if applicable), information about required qualifications and specifications, any bonding and insurance information and/or requirements (if applicable), and the name of a person to contact.

Proposers that plan to use certified SE's should include in their proposal the names of their certified SE subcontractor(s), a description of the work each will perform, and the dollar value of each proposed certified SE subcontract. If a certified SE was not selected, the proposer should provide written justification of the selection process.

Proposers that plan to use certified SE's should provide documentation to demonstrate their good faith subcontracting effort (i.e., phone logs, fax transmittal logs, letters, e-mails) in order to receive any reserved points.

In the event questions arise after an award is made relative to the proposer's good faith efforts, the proposer will be required to provide supporting documentation to demonstrate its good faith subcontracting plan was actually followed. If it is at any time determined that the contractor did not in fact perform its good faith subcontracting plan, the contract award or the existing contract may be terminated.



Contractors will be required to report small entrepreneurship subcontractor or distributor participation and the dollar amount of each. Reports shall be forwarded to Facility Planning and Control upon completion of the project.

The statutes (R.S 39:2001 *et. seq.*) and rules (LAC 19:VIII.Chapters 11 and 13) concerning this program may be viewed at <http://www.legis.state.la.us/lss/lss.asp?doc=96265> and <http://www.doa.louisiana.gov/osp/SE/rule.pdf> respectively.

The State requires competitive pricing, qualifications, and demonstrated competencies in the selection of contractors.

**ATTACHMENT H: MODEL ENERGY SAVINGS PERFORMANCE  
CONTRACT**

**State of Louisiana  
Energy Savings Performance Contract**

## **Energy Savings Performance Contract**

### ***OVERVIEW:***

**This Energy Savings Performance Contract is for design, construction, guarantee, and follow-up monitoring of energy-saving projects. An energy audit was previously completed that identified the costs and savings of each project. The audit provides the basis to develop and negotiate this Energy Savings Performance Contract.**

## ENERGY SAVINGS PERFORMANCE CONTRACT

This Contract for Energy Conservation Equipment and Consulting Services (the "Agreement" or "Contract") is made and entered into as of this day of **<Month, Day, Year>** by and between:

**<legal name of User Agency, state "Board of" if applicable>**  
**<address of User Agency>**

hereinafter referred to as "User Agency" and:

**<legal name of energy service company (ESCO)>**  
**<address of ESCO>**

hereinafter referred to as "ESCO", a **<name of state where headquarters is located>** company doing business in this State whose Louisiana Registered Agent is:

**<legal name of ESCO's Louisiana Registered Agent>**  
**<address of ESCO's Louisiana Registered Agent >**

for the purpose of the sale and installation of an energy saving scope of work, described in **Schedule A (Scope of Work: Equipment to be Installed by ESCO and ESCO Services)** and provision of other services described in **Schedule D (ESCO Measurement & Verification and Service Agreement)** designed to save energy and reduce related costs for certain property and buildings owned by User Agency (the "Premises").

The individual designated by the User Agency who will be responsible for Contract execution and enforcement is:

**<insert name and title of the User Agency's designated responsible party.>**

The individual designated by the ESCO who will be responsible for Contract execution and enforcement is:

**<insert name and title of the ESCO's designated responsible party.>**

### **WITNESSETH**

**WHEREAS**, ESCO has developed or become knowledgeable about certain procedures for controlling energy and water consumption through the use of engineering analyses and devices installed and maintained on the premises of its customers; and

**WHEREAS**, ESCO has made an assessment of the energy consumption characteristics of the Premises, which User Agency has approved; and

**WHEREAS**, User Agency owns and operates the Premises, and is in need of energy and water saving equipment and services designed to reduce consumption and associated costs at said Premises; and

**WHEREAS**, User Agency desires to retain ESCO to sell to it, install and service certain energy efficiency equipment of the type or class described in **Schedule A (Equipment to be Installed by ESCO)** and to provide other services for the purpose of achieving energy cost reductions within Premises, as more fully set forth herein; and

**WHEREAS**, ESCO has selected the Equipment on the basis of quality and price; and

**WHEREAS**, User Agency is authorized under the laws of this State to enter into this Contract for the purposes set forth herein;

**WHEREAS**, required approval, clearance, and coordination has been accomplished from and with appropriate agencies;

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein, and intending to be legally bound hereby, User Agency and ESCO hereto covenant and agree as follows:

## **SECTION 1. PURCHASE AND SALE**

User Agency agrees to purchase and ESCO agrees to sell the Equipment, together with installation, maintenance and other services as provided herein, on the terms and conditions of this Agreement.

The agreed to Contract Sum for the Work is \$ **<Insert Cost>**. The Contract Sum shall be equal to the sum of all materials, labor, auditing, design, engineering, project management fees, and outside services. **Schedule A (Scope of Work: Equipment to Be Installed by ESCO and ESCO Services)** shall list all Equipment and Services to be provided by the ESCO as well as their costs and an overall total which reflects the above Contract Sum. Payment terms are described in **Schedule O (Installment Payment Schedule and Schedule of Values)**. The total amount of the Contract shall be stated in accordance with a maximum of a 20-year schedule of payment or with a schedule in accordance with the acquisition-cost weighted average useful service life of the recommended ECMs depending on whichever period is shorter. Any costs credited to the User Agency or ESCO associated with setup, maintenance, or repair must be specifically stated in the year to which said costs apply.

ESCO shall provide the work identified on **Schedule A (Scope of Work: Equipment to Be Installed by ESCO and ESCO Services)**, and the services detailed on **Schedule D (ESCO Measurement & Verification and Service Agreement)**. ESCO shall supervise and direct the Work and shall be solely responsible for all construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work under this Agreement. ESCO shall be responsible to pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation and other facilities and services necessary for the proper execution and completion of the Work.

## **SECTION 2. ENERGY MANAGEMENT PLAN**

**SECTION 2.1. Plan Details.** ESCO has prepared a complete Technical Energy Audit, dated **<insert date>** which has been approved and accepted by User Agency as set forth in **Exhibit II (i) (Certificate of Acceptance – Technical Energy Audit)**. The Technical Energy Audit provided by the ESCO

includes an estimate of the acquisition-cost weighted average useful service life of the recommended ECMs.

***<Note to User Agency: State of Louisiana prohibits entering into an Energy Savings Performance Contract with duration, including all optional renewal terms, that exceeds the lesser of twenty years or the weighted average useful life of the assets being financed. Do not accept a Technical Energy Audit unless the ESCO has included an estimate of the acquisition-cost weighted average useful service life of the recommended ECMs.>***

**SECTION 2.2. Schedules, Exhibits and Appendices.** This Agreement incorporates and makes a part hereof certain Schedules and Exhibits listed in **Section 39 (Schedules and Exhibits)** of this Agreement which determines the precedence of the Schedules and Exhibits relative to each other and to this Agreement in the event of conflict. Notwithstanding, the provisions of this Agreement and the attached Schedules shall govern in the event of any inconsistencies between the Technical Energy Audit and the provisions of this Agreement.

### **SECTION 3. ENERGY USAGE RECORDS AND DATA**

User Agency has furnished and will continue to furnish (or authorize its energy suppliers to furnish) during the Term of this Agreement to ESCO, upon its request, all of its records and complete data concerning energy and water usage and related maintenance for the Premises, including the following data for the most current 24 month period: utility records; occupancy information; descriptions of any changes in the building structure or its heating, cooling, lighting or other systems or energy requirements; descriptions of all energy consuming or saving equipment used in the Premises; bills and records relating to maintenance of energy-related equipment, and a description of energy management procedures utilized. If requested, User Agency shall also provide any prior energy audits of the Premises, and copies of User Agency's financial documents and records related to energy usage and operations, and shall make agents and employees familiar with such records available for consultations and discussions with ESCO. ESCO acknowledges receipt of all data, records or other information necessary to properly complete the Technical Energy Audit and support ESCO's Energy And Cost Savings Guarantee. The agency will provide a "letter of authorization" to the utilities so that the ESCO can obtain additional usage information and discuss service requirements with the respective utilities.

### **SECTION 4. TRANSFER AT END OF TERM**

If the User Agency has made all payments owed under this Agreement and is otherwise not in default, title to the Equipment shall be conveyed to the User Agency, excluding any software licensed by ESCO to the User Agency, at the end of the Term of this Agreement. The date of sale shall be the last day of the Term. On the date of sale, ESCO or its assigns shall deliver to the User Agency documents conveying to the User Agency, for no additional consideration, title to the Equipment and documents evidencing the termination of this Agreement.

### **SECTION 5. TIME FOR COMPLETION; COMMENCEMENT DATE; TERM OF AGREEMENT; DEFINITIONS**

**SECTION 5.1. Construction Commencement Date and Time for Completion of Work.** Work must commence within thirty (30) days of final approval of this Contract, unless otherwise agreed to by both parties, and shall be completed as set forth in **Schedule G (Construction and Installation Schedule)**. A mandatory pre-construction conference shall be held prior to commencement of work. The Time for Completion of Work is of the essence of this Contract. By executing this Contract, the parties hereto confirm the Time of Completion of Work is a reasonable period for performing the Work. If ESCO is delayed at any time in progress of the Work by an act or neglect of User Agency or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond ESCO control, then the Time for Completion of the Work shall be extended by Change Order, for such reasonable time as the parties hereto may determine. If ESCO fails to complete the project before the first scheduled payment date, through no fault of the User Agency, then ESCO shall be responsible for any debt payments due during the completion period. If interim period cost savings are sufficient to cover debt service during this period, then no payment will be due from ESCO.

**SECTION 5.2. Certificate of Acceptance.** A “sample” copy of the **Certificate of Acceptance-Installed Equipment** is attached to the contract.

**SECTION 5.3. Performance Commencement Date.** The Performance Commencement Date shall be the first day of the month after the month in which all schedules are in final form and accepted by User Agency and when ESCO shall have delivered a Notice to User Agency that it has installed and commenced operating all of the Equipment specified in **Schedule A (Scope of Work: Equipment to be Installed by ESCO and ESCO Services)** and in accordance with the provisions of **Section 13 (Construction and Installation by ESCO)** and **Schedule H (Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment)**, and User Agency has inspected and accepted said installation and operation as evidenced by the Certificate of Acceptance as set forth in **Exhibit II (ii) (Certificate of Acceptance—Installed Equipment)**. Notwithstanding anything in **this Agreement** to the contrary, the Performance Commencement Date shall not occur and the User Agency shall not be required to accept the work under this Agreement unless and until all Equipment installation for the subject Premises is completed by ESCO in accordance with the terms and conditions of this Agreement, including without limitation the satisfaction of all claims for labor and materials. User Agency shall have thirty (30) days after notification by the ESCO to inspect and accept the Equipment. The User Agency reserves the right to reject the Equipment if installation fails to meet reasonable standards of workmanship, does not comply with applicable building codes, or is otherwise not in compliance with this Agreement. In the event claims are received, acceptance shall not occur until after the receipt by User Agency of a signed receipt in full or an order of withdrawal of said claims.

**SECTION 5.4. Performance Term of Agreement.** Unless otherwise terminated pursuant to the terms of this Agreement, the Performance Term of this Agreement shall begin with the Performance Commencement Date and continue for a period of **<Insert term>** years. This Agreement shall be effective and binding upon the parties immediately upon its final approval by the Commissioner of Administration. The period from contract execution until the Performance Commencement Date shall be known as the "Interim Period". All energy savings achieved during the interim period will be fully credited to User Agency.

**SECTION 5.5. Definitions.**

**Annual Energy Cost Savings:** Energy expenses eliminated or avoided during a guarantee year as a result of equipment installed or modified, or services performed by the energy service company (ESCO). The reduction in energy consumption for each energy source during each guarantee year is calculated as the total energy consumption of that energy source during the baseline period less actual energy consumption of that energy source during that guarantee year. The Annual Energy Cost Savings Guarantee is determined by multiplying the reduction in energy consumption by the baseline unit cost for that energy source established in the contract.

**Annual Maintenance Cost Savings:** Maintenance and operating expenses eliminated and future capital replacement expenditures avoided during a guarantee year as a result of equipment installed or modified, or services performed by the ESCO.

**Annual New Maintenance Cost:** Any additional maintenance or operating expenses during a guarantee year created as a result of equipment installed or modified or services performed by the ESCO.

**Energy Conservation Measure Units:** Energy Savings shall be guaranteed on the basis of annual reductions of Btuh, kWh, kW, therms, gallons or similar units of energy, fuel, electrical demand and water as appropriate for each energy savings source.

**Guarantee of Energy Savings:** The agreement pursuant to which the provider of the energy conservation measures (ESCO) guarantees the amount of the savings to be realized by the agency under the contract must meet or exceed the total annual contract payments made by the agency for such contract, including financing charges to be incurred by the agency over the life of the contract. In the event the Energy Savings achieved during the guarantee year is less than the Guarantee of Energy Savings for that guarantee year, ESCO shall pay to User Agency an amount equal to the deficiency.

**Maintenance Costs:** Examples of maintenance expenses that may be avoided through a performance contract include the cost of lamp and ballast replacement, purchased HVAC parts and service or similar expenses that can be shown to recur regularly through reasonable documentation.

**Operating Costs:** Examples of operating costs that may be avoided through a performance contract include reducing regular ongoing expenses such as the cost of water treatment chemicals, reductions in required routine maintenance (such as filter changes) or long term reassignment of personnel but does not include merely shifting personnel tasks or similar “soft” cost savings.

## **SECTION 6. PAYMENTS**

**SECTION 6.1 ESCO Measurement & Verification Fees.** Throughout the Term of this Agreement ESCO shall receive a fee of **\$<Dollar amount of Measurement & Verification fee>** per year for Measurement and Verification of the Energy and Cost Savings. Annual guaranteed energy and cost savings achieved shall be sufficient to cover any and all fees to be paid to ESCO for the provisions of **Schedule D (ESCO Measurement & Verification and Service Agreement).**

**SECTION 6.2 Energy and Cost Savings Guarantee.** Subsequent to the Performance Commencement Date and throughout the Term of this Agreement, ESCO hereby guarantees to User Agency the level of Annual Projected Energy and Cost Savings as detailed in **Schedule C (Energy and**



**Cost Savings Guarantee.)** Energy and Cost Savings shall be guaranteed on the basis of annual reduction of kWh, kW, therms, gallons or similar units of energy, fuel, electrical demand and water as well as on the basis of dollars saved and shall include operation and maintenance savings. Annual operation and maintenance cost savings shall be based on verifiable existing facility maintenance expenses. The Energy and Cost Savings Guarantee shall be determined by multiplying units of energy, fuel, electrical demand and water saved by a pre-determined baseline unit cost for each unit that is fixed or escalated at a pre-determined rate (“Annual Energy Cost Escalation Rate”) in accordance with the terms of this Contract for the full term of the Contract. The Annual Energy Cost Escalation Rate for this Contract is fixed at *<User Agency: Insert the appropriate Annual Energy Cost Escalation Rate currently allowed by FP&C. This rate must have been stated in the RFP.>* percent per year. The Annual Energy Cost Escalation Rate shall not be applied to the cost of water utilities or operation and maintenance cost savings. The guarantee shall remain in effect for the full term of the performance period.

This guarantee is achieved as a result of the installation and operation of the Equipment and provision of services provided for in this Agreement as specified in **Schedule D (ESCO Measurement & Verification and Service Agreement)** and in accordance with the Savings Calculation Formula as set forth in **Schedule F (Savings Measurement and Calculation Formulae; Methodology to Adjust Baseline)**. This Energy and Cost Savings Guarantee is subject to the satisfactory performance by User Agency of all its obligations under this Agreement including, without limitation, adjustment in accordance with **Section 19 (Material Changes)** hereunder. In the event this Agreement is terminated due to an uncured Event of Default by User Agency, this Energy and Cost Savings Guarantee shall be cancelled.

The Energy and Cost Savings Guarantee is set forth in annual increments for the term of the Agreement as specified in **Schedule C (Energy and Cost Savings Guarantee)** and has been structured by the ESCO so as to be sufficient to cover any and all annual payments required to be made by the User Agency as set forth in **Schedule D (ESCO Measurement & Verification and Service Agreement)** and **Schedule O (Installment Payment Schedule and Schedule of Values)**. The payment obligation is *<User Agency: select and include one of the following phrases as appropriate for this contract; “set as a percentage of annual energy and operational/maintenance cost savings attributable to the services and/or equipment” or “guaranteed by the ESCO to be less than the annual energy and operational/maintenance cost savings attributable to the services and/or equipment”.>* All payments shall be subject to review and approval by User Agency.

**SECTION 6.3. Annual Review and Reimbursement/Reconciliation.** Energy-related cost savings shall be measured and/or calculated as specified in **Schedule E (Baseline Energy Consumption)** and **Schedule F (Savings Measurement and Calculation Formulae; Methodology to Adjust Baseline)** and a report provided within sixty (60) days of each anniversary of the Performance Commencement Date and within thirty (30) days of receiving final bill.

**SECTION 6.4. ESCO’s Responsibility for Payment of Annual Guaranteed Savings Deficiencies.** In the event the Energy and Cost Savings achieved during such twelve-month guarantee period is less than the Guaranteed Energy and Cost Savings, ESCO shall pay to User Agency an amount equal to the deficiency, within sixty (60) days of the annual reconciliation.

If during any twelve-month guarantee period the Energy and Cost Savings achieved are greater than the Guaranteed Energy and Cost Savings, one hundred (100) percent of such excess Cost Savings shall be retained by the User Agency. Excess savings shall not be allocated to savings shortfalls in other years.

**SECTION 6.5. ESCO Compensation and Fees.** ESCO has structured the Energy and Cost Savings Guarantee, so as to be sufficient to include any and all annual payments required to be made by the User Agency in connection with the acquisition of Equipment to be installed by ESCO under this Contract as set forth in **Schedule O (Installment Payment Schedule and Schedule of Values)**. Actual energy and operations savings achieved by ESCO through the operation of Equipment and performance of services by ESCO shall be sufficient to cover any and all annual fees to be paid by User Agency to ESCO for the provision of services as set forth and in accordance with the provisions of **Schedule D (ESCO Measurement & Verification and Service Agreement)**.

**Taxes.** ESCO hereby agrees that the responsibility for payment of taxes from the funds thus received under this Contract and/or legislative appropriation shall be ESCO's obligation and identified under Federal tax identification number **<Insert ESCO's Federal Tax Identification Number>**.

**SECTION 6.6. Allowable Payment Sources.** User Agency has pre-determined allowable payment sources to be applied to annual payments, as follows:

**User Agency will allow the following:**

- Energy and water cost savings
- User Agency material/commodity savings (cost savings from replacement lamps, ballasts, etc.), including scheduled replacement of parts
- Outside labor cost savings, including maintenance contracts.

**User Agency will negotiate the following:**

- User Agency equity cash outlay
- User Agency deferred maintenance cost
- Offset of future User Agency capital cost **<Note to User Agency: Ensure that this is only credited as a cash infusion, and not again credited as a savings.>**
- User Agency in-house labor costs **<Note to User Agency: These savings are usually not allowable unless staff will be terminated resulting in actual budget savings.>**

**User Agency will not allow the following:** **<Note to User Agency: Move any items from "negotiate" to this section if disallowed; otherwise delete this line.>**

Any cost savings related to maintenance and operation of the facilities will be rigorously reviewed and, if agreed to, will be limited to those that can be thoroughly documented and approved by User Agency. **<Note to User Agency: User Agency should provide direction to ESCO by stipulating allowable maintenance cost avoidance items.>**

**SECTION 6.7. Monitoring Information Procedure.** Payments due to ESCO under this section shall be calculated each **<period of time – month, quarter or year (not to be paid in advance)>** in the following manner:

(i) By the **<number of days – i.e., 30<sup>th</sup>>** day after receipt, User Agency shall provide ESCO with copies of all energy bills for the Premises that it shall have received for the preceding period;

(ii) Upon receipt of the required information, ESCO shall calculate the savings in accordance with the agreed-upon calculation formulae as set forth in **Schedule F (Savings Measurement and Calculation Formulae; Methodology to Adjust Baseline)** that comply with the *International Performance Measurement and Verification Protocol*, current revision, established by the Department of Energy.

**SECTION 6.8. Effective Date of Payment Obligation.** Notwithstanding the above provisions, User Agency shall not be required to begin any payments to ESCO under this Contract unless and until all equipment installation is completed by ESCO in accordance with the provisions of **Section 10 (Acceptance Testing)**, **Section 13 (Construction and Installation by ESCO)** and **Schedule H (Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment)**, and accepted by User Agency as evidenced by the signed Certificate of Acceptance as set forth in **Exhibit II (ii) (Certificate of Acceptance—Installed Equipment)**, and unless and until said equipment is fully and properly functioning. ESCO shall provide the User Agency with clear lien certificates issued after the period for the filing of liens arising out of the installation of the equipment has expired. Such certificates shall be issued by the recorder of mortgages for the underlying parish certifying that no liens have been filed with respect to the installation of the equipment.

## **SECTION 7. MODIFICATION OF EQUIPMENT**

During the Term of this Agreement, User Agency will not, without the prior written consent of ESCO, affix or install any accessory, Equipment or device on any of the Equipment if such addition will change or impair the originally intended functions, value or use of the Equipment without ESCO's prior written approval, which shall not be unreasonably withheld.

## **SECTION 8. UPGRADING OR ALTERING THE EQUIPMENT**

ESCO shall at all times have the right, subject to User Agency's prior written approval and prior review and approval by Facility Planning and Control, which approval shall not be unreasonably withheld, to change the Equipment, revise any procedures for the operation of the equipment or implement other energy saving actions in the Premises, provided that:

- (i) the ESCO complies with the standards of comfort and services set forth in **Schedule I: Standards of Comfort** herein;
- (ii) such modifications or additions to, or replacement of the Equipment, and any operational changes, or new procedures are necessary to enable the ESCO to achieve the energy and cost savings at the Premises and;

- (iii) any cost incurred relative to such modifications, additions or replacement of the Equipment, or operational changes or new procedures shall be the responsibility of the ESCO.

All modifications, additions or replacements of the Equipment or revisions to operating or other procedures shall be described in a supplemental Schedule(s) to be provided to the User Agency for approval, which shall not be unreasonably withheld, provided that any replacement of the Equipment shall be new and have equal or better potential to reduce energy consumption at the Premises than the Equipment being replaced. The ESCO shall update any and all software to be used in connection with the Equipment in accordance with the provisions of **Section 15.1 (Ownership of Certain Proprietary Property Rights)** and **Schedule J (ESCO's Maintenance Responsibilities)**. All replacements of and alterations or additions to the Equipment shall become part the Equipment described in **Schedule A (Equipment to be Installed by ESCO)** and shall be covered by the provisions and terms of **Section 10 (Acceptance Testing)** and **Section 13 (Construction and Installation by ESCO)**.

## **SECTION 9. ENVIRONMENTAL REQUIREMENTS**

**SECTION 9.1. Excluded Material and Activities.** User Agency recognizes that in connection with the installation and/or service or maintenance of Equipment at User Agency's Premises, ESCO may encounter, but is not responsible for, any work relating to (i) asbestos, materials containing asbestos, or the existence, use, detection, removal, containment or treatment thereof, or (ii) pollutants, hazardous wastes, hazardous materials, contaminants other than those described in this Section below (collectively "Hazardous Materials"), or the storage, handling, use, transportation, treatment, or the disposal, discharge, leakage, detection, removal, or containment thereof. The materials and activities listed in the foregoing sentence are referred to as "Excluded Materials and Activities". User Agency agrees that if performance of work involves any Excluded Materials and Activities, User Agency will perform or arrange for the performance of such work and shall bear the sole risk and responsibility therefor. In the event ESCO discovers Hazardous or Excluded Materials, ESCO shall immediately cease work, remove all ESCO personnel or subcontractors from the site, and notify the User Agency. The User Agency shall be responsible to handle such Materials at its expense. ESCO shall undertake no further work on the Premises except as authorized by the User Agency in writing. Notwithstanding anything in this Agreement to the contrary, any such event of discovery or remediation by the User Agency shall not constitute a default by the User Agency. In the event of such stoppage of work by ESCO, the Time for Completion of Work will be automatically extended by the amount of time of the work stoppage.

ESCO shall be responsible for any hazardous or other materials, including, without limitation, those listed in this **Section 9.1 (Excluded Material and Activities)** that it may bring to the Premises.

### **SECTION 9.2. Polychlorinated Biphenyl (PCB) Ballasts; Mercury Lamps.**

ESCO shall enter into an agreement with an environmentally assessed company that specializes in recycling ballasts that contain Polychlorinated Biphenyls (PCBs), and that holds all current licenses and permits required to provide this service. The service is provided to ensure the proper and safe destruction of PCB containing components within a ballast and to recycle the remaining metals. Lighting ballasts manufactured prior to 1979 contain PCBs. All ballasts manufactured after July 1, 1978 that do not contain PCBs are required to be clearly marked "**No PCBs**" by the manufacturer. The ESCO shall ensure that any ballast not clearly marked "**No PCBs**" by the manufacturer is packaged for

recycling. The ballast disposal firm will provide an informational packet, packing receptacles and instructions, labels and shipping materials, transportation, recycling, and incineration services for ballasts containing PCB's. All capacitors and asphalt potting compound materials removed from User Agency's PCB ballasts will be incinerated in a federally approved facility. The ESCO shall ensure that an original Certificate of Disposal is provided to User Agency. ESCO's responsibility shall be for the proper handling process, and legal management of same, of all PCB ballasts generated as a result of the installation of the Equipment until said Certificate(s) are delivered. ESCO shall enter into an agreement with an environmentally assessed company(s) that specialize in recycling mercury containing lamps, and holding all current licenses and permits required to provide these services. The service is provided to ensure the proper and safe recycling in accordance with EPA requirements, and a copy of the manifest. The ESCO shall ensure that an original Certificate of Recycling is provided to User Agency. ESCO's responsibility shall be for the proper handling process, and legal management of same, of all mercury containing lamps generated as a result of the installation of the Equipment until said Certificate(s) are delivered.

User Agency agrees to sign manifests of ownership for all PCB ballasts and mercury lamps removed from the Premises.

## **SECTION 10. ACCEPTANCE TESTING**

**SECTION 10.1. Modification of Schedules.** At the time of Acceptance Testing, the ESCO shall validate Schedules and revise them as needed to ensure that this Agreement and its Schedules properly account for as-installed conditions.

**SECTION 10.2. Systems Startup and Equipment Commissioning.** The ESCO shall conduct a thorough and systematic performance test of each element and total system of the installed Equipment in accordance with the procedures specified in **Schedule H (Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment)** and prior to acceptance of the project by User Agency as specified in **Exhibit II (ii) (Certificate of Acceptance – Installed Equipment)**. Testing shall be designed to determine if the Equipment is functioning in accordance with both its published specifications and the Schedules to this Agreement, and to determine if all building systems, subsystems or components are functioning properly within the new integrated environment. The ESCO shall provide notice to the User Agency of the scheduled test(s) and the User Agency and/or its designees shall have the right to be present at any or all such tests conducted by ESCO and/or manufacturers of the Equipment. The ESCO shall be responsible for correcting and/or adjusting all deficiencies in systems and Equipment operations that are observed during system commissioning procedures. The ESCO shall be responsible for correcting and/or adjusting all deficiencies in Equipment operations that are observed during system testing procedures. Prior to User Agency acceptance ESCO shall also provide User Agency with satisfactory documentary evidence that the Equipment installed is the Equipment specified in **Schedule A (Equipment to Be Installed by ESCO)**.

## **SECTION 11. EQUIPMENT WARRANTIES/OPERATIONS AND MAINTENANCE MANUALS**

**SECTION 11.1. Equipment Warranties.** ESCO warrants that all equipment sold and installed, as part of this Agreement is new, will be free from defects in materials or workmanship, will be installed



properly in a good and workmanlike manner, and will function properly for a minimum period of one (1) year from the date of the **Certificate of Acceptance-Installed Equipment (Exhibit II, ii)** for the particular energy conservation measure. After the warranty period, ESCO shall have no responsibility for performing maintenance, repairs, or making manufacturer warranty claims relating to the Equipment, except as provided in **Schedule D (ESCO Measurement & Verification and Service Agreement)**.

Copies of warranties shall be delivered to User Agency at the time of Acceptance of Installed Equipment and shall become Exhibit IV of this Contract.

All warranties shall be transferable and extend to the User Agency. The warranties shall specify that only new, not reconditioned, parts shall be used and installed when repair is necessitated by malfunction.

Notwithstanding the above, nothing in this Section shall be construed to alleviate/relieve the ESCO from complying with its obligations to perform under all terms and conditions of this Contract and as set forth in all attached Schedules.

**SECTION 11.2. Operations & Maintenance Manuals.** Copies of Operations & Maintenance Manuals for all equipment sold and installed as part of this Agreement shall be delivered to User Agency at the time of Acceptance of Equipment and shall become Exhibit III of this Contract.

## **SECTION 12. PERMITS AND APPROVALS; COORDINATION**

**SECTION 12.1. Permits and Approvals.** All required permits and licenses for the installation of the Equipment, including without limitation, this State's plumbing and electrical permits, shall be secured and paid for by the ESCO. User Agency shall use its best efforts to assist ESCO in obtaining all necessary permits and approvals for installation of the Equipment. In no event shall User Agency, however, be responsible for payment of any permit or license fees. The equipment and the operation of the equipment by ESCO shall conform to all federal and state code requirements. ESCO shall furnish copies of each permit or license which is required to perform the work to the User Agency before the ESCO commences the portion of the work requiring such permit or license.

Design documentation shall be submitted to User Agency for review. ESCO shall also submit design documentation to Facility Planning and Control for review. The total review process will not be longer than 30 days, provided no code violations or deviations from current FP&C accepted design and construction standards have been identified during this period.

**SECTION 12.2. Coordination During Installation.** User Agency and ESCO shall coordinate, at the mandatory pre-construction conference and throughout the term of the contract, the activities of ESCO's equipment installers with those of the User Agency, its employees, and agents. ESCO shall not commit or permit any act, which will interfere with the performance of business activities conducted by the User Agency or its employees without prior written approval of the User Agency.

## **SECTION 13. CONSTRUCTION AND INSTALLATION BY ESCO**

**SECTION 13.1. Construction Schedule.** Construction and equipment installation shall proceed in accordance with the construction schedule approved by User Agency and attached hereto as **Schedule G (Construction and Installation Schedule)**. Change orders, as agreed to by the User Agency in a

supplemental schedule, shall be incorporated herein as stipulated in **Section 8 (Upgrading or Altering the Equipment)**.

**SECTION 13.2 ESCO's Duty of Proper Installation.** All services called for by this Agreement which constitute the "practice of architecture" or the "practice of engineering" shall be performed by properly qualified and licensed professionals employed or contracted by ESCO and shall be performed in accordance with applicable law. ESCO shall perform all tasks/phases under this Agreement, including construction, and shall install the Equipment in such a manner so as not to harm the structural integrity of the buildings or their operating systems and so as to conform to the standards set forth in **Schedule I (Standards of Comfort)** and **Schedule G (Construction and Installation Schedule)**. ESCO shall repair and restore to its original condition any area of damage caused by ESCO's performance under this Agreement. User Agency reserves the right to review the work performed by ESCO and to direct ESCO to take certain corrective actions if, in the opinion of User Agency, the structural integrity of the Premises or its operating system is or will be harmed. All costs associated with such corrective action caused by ESCO's breach of its obligations under this Agreement shall be borne by ESCO. All construction and installation by ESCO shall be in compliance with applicable building, fire and other codes in existence as of the date of this contract.

**SECTION 13.3. ESCO's Superintendence and Supervision.** ESCO shall provide, during the progress of the installation and testing, a competent superintendent and any necessary assistants. The superintendent shall represent the ESCO and all directions or notices given to him or her shall be binding on the ESCO.

The superintendent shall give efficient supervision to the work, using his or her best skill and attention. The superintendent shall see that the work is carried out in accordance with this Agreement and in a thorough first-class manner in every respect. The superintendent shall establish all lines, level, and marks, if any, necessary to facilitate the operations of all concerned in such installation.

**SECTION 13.4. ESCO Responsibility.** ESCO shall remain responsible for the professional and technical accuracy of all services performed, whether performed by the ESCO or its subcontractors or others on its behalf, throughout the term of this Agreement.

## **SECTION 14. TRAINING AND FOLLOW-UP ACTIVITIES BY ESCO**

**SECTION 14.1 Training.** The ESCO shall conduct the training program described in **Schedule M (ESCO's Training Responsibilities)**.

**SECTION 14.2 Energy Star Application.** At User Agency request, ESCO will assist in obtaining Energy Star certification.

**SECTION 14.3 Emissions Reductions Documentation and Reporting.** The ESCO shall include emissions reductions quantities in each annual report and advise the User Agency on opportunities to achieve monetary benefit from such credits.

## **SECTION 15. OWNERSHIP**

**SECTION 15.1. Ownership of Certain Proprietary Property Rights.** User Agency shall not, by virtue of this Agreement, acquire any ownership interest in any formulas, patterns, devices, secret inventions or processes, copyrights, patents, other intellectual or proprietary rights, or similar items of property which are or may be used in connection with the Equipment. User Agency shall, however, have a nonexclusive license to utilize all such intellectual or proprietary rights in connection with its use of the Equipment under this Agreement. The ESCO hereby grants to the User Agency a perpetual, irrevocable, royalty-free license to any and all software or other intellectual property or proprietary rights necessary for the User Agency to continue to operate, maintain, and repair the Equipment in a manner that will yield maximal energy consumption reductions. This license shall continue subsequent to any termination or expiration of this Agreement other than termination due to breach by User Agency. Software upgrades outside the term of agreement shall be the responsibility of User Agency.

**SECTION 15.2. Ownership of Documents.** All drawings, reports and materials prepared by the ESCO specifically in performance of this Contract shall become the property of User Agency. Within thirty (30) days following the Performance Commencement Date, ESCO shall provide the User Agency as-built record drawings of the Equipment installation and all specifications therefor. “Drawings” shall include three sets of corrected prints, and electronic files in compliance with User Agency’s CAD standards. **<User Agency: Consult with Facility Planning and Control for desired formats>**

All records, reports, documents and other material delivered or transmitted to ESCO by User Agency shall remain the property of User Agency, and shall be returned by ESCO to User Agency, at ESCO’s expense, at termination or expiration of this contract. All records, reports, documents, or other material related to this contract and/or obtained or prepared by ESCO in connection with the performance of the services contracted for herein shall become the property of User Agency, and shall, upon request, be returned by ESCO to User Agency, at ESCO’s expense, at termination or expiration of this contract.

**SECTION 15.3. Ownership of Existing Equipment.** Ownership of the equipment and materials existing at the Premises at the time of execution of this Agreement shall remain the property of User Agency even if it is replaced or its operation made unnecessary by work performed by ESCO pursuant to this Agreement. If applicable, ESCO shall advise the User Agency in writing of all equipment and materials to be replaced at the Premises and the User Agency shall within fifteen (15) days designate in writing to the ESCO which equipment and materials should not be disposed of off-site by the ESCO. It is understood and agreed to by both Parties that the User Agency shall be responsible for and designate the location and storage for any equipment and materials that should not be disposed of off-site. Except as may be otherwise provided in this Agreement, the ESCO shall be responsible for the disposal of all equipment and materials designated by the User Agency as disposable off-site in accordance with all applicable laws and regulations regarding such disposal. Under no circumstance shall ESCO be obligated to dispose of or take responsibility for any materials identified in **Section 9 (Environmental Requirements)** of this Agreement.

**SECTION 15.4. Ownership of Measurement and Verification Equipment.** User Agency agrees to provide rent-free space for the location of equipment required to provide the ongoing measurement of energy and water savings (the “Metering Equipment”). If required, User Agency shall provide and maintain a dedicated telephone line to facilitate remote monitoring of the Equipment. User Agency shall not by virtue of this Agreement, acquire any interest in any formulas, patterns, devices, secret inventions or processes, copyrights, patents, other intellectual or proprietary rights, or similar items of property which are or may be used in connection with the verification of savings by ESCO. ESCO shall insure



such Metering Equipment at its own expense and User Agency shall have no liability for such Metering Equipment except in the event of damage arising from the fault of the User Agency.

## **SECTION 16. LOCATION AND ACCESS**

**SECTION 16.1. ESCO Access.** ESCO acknowledges that there exists sufficient space on the Premises for the installation and operation of the Equipment. User Agency shall take reasonable steps to protect such Equipment from harm, theft and misuse during the term of this Agreement. User Agency shall provide access to the Premises for ESCO to perform any function related to this Agreement during regular business hours, or such other reasonable hours as may be requested by ESCO and acceptable to the User Agency. ESCO shall be granted immediate access to make emergency repairs or corrections as it may, in its discretion, determine are needed. ESCO's access to the Premises to make emergency repairs or corrections as it may determine are needed shall not be unreasonably restricted by User Agency. ESCO shall immediately notify the User Agency when emergency action is taken and follow up with written notice within three (3) business days specifying the action taken, the reasons therefor, and the impact upon the Premises, if any.

## **SECTION 17. EQUIPMENT SERVICE**

### **SECTION 17.1. Actions by ESCO.**

As required under the Warranty, ESCO shall provide all service, repairs, and adjustments to the Equipment installed under terms of this Agreement during the warranty period. After the warranty period and throughout the remainder of the Contract term, the ESCO shall provide all service, repairs, adjustments to the Equipment and other responsibilities as shall be clearly defined under **Schedule J (ESCO's Maintenance Responsibilities)** and **Schedule D (ESCO Measurement & Verification and Service Agreement)**.

**SECTION 17.2. Malfunctions and Emergencies.** User Agency shall use its best efforts to notify the ESCO or its designated subcontractor within twenty-four (24) hours after the User Agency's actual knowledge and occurrence of:

- (i) any malfunction in the operation of the Equipment or any preexisting energy related equipment that might materially impact upon the savings or savings guarantee,
- (ii) any interruption or alteration to the energy supply to the Premises, or
- (iii) any alteration or modification in any energy-related equipment or its operation.

The ESCO shall provide a written record of all service work performed. This record will indicate the reason for the service, description of the problem and the corrective action performed.

**SECTION 17.3. Actions by User Agency.** During the term of this Agreement, User Agency agrees to maintain the Premises in good repair and to protect and preserve all portions thereof, which may in any way affect the operation or maintenance of the Equipment, all in accordance with the same standard of care the User Agency applies to the Premises generally, that of a reasonably prudent government User

Agency. User Agency agrees to perform such actions as set forth in **Schedule K (User Agency's Maintenance Responsibilities)** and shall not move, remove, modify, alter, or change in any way the Equipment or any part thereof without notifying the ESCO except as set forth in **Schedule K (User Agency's Maintenance Responsibilities)**. Notwithstanding the foregoing, User Agency may take reasonable steps to protect the Equipment if, due to an emergency, it is not possible or reasonable to notify ESCO before taking any such actions. In the event of such an emergency, User Agency shall take reasonable steps to protect the Equipment from damage or injury.

## **SECTION 18. STANDARDS OF COMFORT**

During the term of this Agreement, ESCO will maintain and operate the Equipment in a manner that will provide the standards of heating, cooling, hot water, lighting and other systems as described in **Schedule I (Standards of Comfort)**.

## **SECTION 19. MATERIAL CHANGES**

**SECTION 19.1. Material Change Defined:** A Material Change shall include any change in or to the Premises, whether structural, operational or otherwise in nature which reasonably could be expected to increase or decrease annual energy consumption in accordance with the provisions and procedures set forth in **Schedule E (Baseline Energy Consumption)** and **Schedule F (Savings Measurement and Calculation Formulae; Methodology to Adjust Baseline)**. Actions by the User Agency that may result in a Material Change include but are not limited to the following:

- (i) change in the manner of use of the Premises by the User Agency; or
- (ii) change in the hours of operation for the Premises or for any equipment or energy using systems operating at the Premises; or
- (iii) permanent changes in the comfort and service parameters set forth in **Schedule I (Standards of Comfort)**; or
- (iv) change in occupancy of the Premises; or
- (v) change in structure of the Premises; or
- (vi) change in types and quantities of equipment used at the Premises or
- (vii) modification, renovation or construction at the Premises; or
- (viii) the User Agency's failure to provide maintenance of and repairs to the Equipment in accordance with **Schedule K (User Agency's Maintenance Responsibilities)**; or
- (ix) casualty or condemnation of the Premises or Equipment, or
- (x) changes in utility provider or utility rate classification, or
- (xi) any other conditions other than climate affecting energy or water use at the Premises.

### **SECTION 19.2. Reported Material Changes; Notice by User Agency.**

The User Agency shall use its best efforts to deliver to the ESCO a written notice describing all actual or proposed Material Changes in the Premises or in the operations of the Premises at least 21 days before any actual or proposed Material Change is implemented or as soon as is practicable after an emergency or other unplanned event. Notice to the ESCO of Material Changes which result because of a bona fide emergency or other situation which precludes advance notification shall be deemed sufficient if given by the User Agency within twenty-four (24) hours after having actual knowledge that the event constituting the Material Change occurred or was discovered by the User Agency to have occurred.

**SECTION 19.3. Absence of Notification of Material Change.** In the absence of notification of Material Changes in the Premises or in their operations, the baseline consumption will be adjusted to account for this change retroactive to the date when the agreed upon condition was changed. The ESCO shall report its findings to the User Agency in a timely manner and the ESCO and User Agency shall determine what, if any, adjustments to the baseline will be made in accordance with the provisions set forth in **Schedule F (Savings Measurement and Calculation Formulae; Methodology to Adjust Baseline)** and **Schedule E (Baseline Energy Consumption)**.

## **SECTION 20. INSURANCE REQUIREMENTS**

### **20.1 STANDARDIZED INSURANCE REQUIREMENTS FOR ALL STATE CONTRACTS**

20.1.1 All policies and certificates of insurance of the ESCO/Subcontractor shall contain the following clauses:

20.1.1.1 The ESCO/Subcontractor's insurer will have no right of recovery or subrogation against the User Agency, it being the intention of the parties that the insurance policies so affected shall protect both parties and the primary coverage for any and all losses covered by the below described insurance.

20.1.1.2 The User Agency shall be named as an additional insured as regards negligence by the ESCO (ISO Forms CG 20 10, Current form approved for use in Louisiana).

20.1.1.3 The insurance companies issuing the policy or policies shall have no recourse against the User Agency for payment of any premiums or for assessments under any form of policy.

20.1.1.4 Any and all deductibles in the below described insurance policies shall be assumed by and be at the sole risk of the ESCO or Subcontractor.

#### **20.1.2 INSURANCE:**

The ESCO/Subcontractor, prior to commencing work, shall provide at his own expense, proof of the following insurance coverages required by the contract to the User Agency with insurance companies authorized in the State of Louisiana. Insurance is to be placed with insurers with an A. M. Best's rating of no less than A-:VI. This rating requirement will be waived for the workers' compensation coverage.

Thirty days prior notice of cancellation shall be given to the User Agency by registered mail, return receipt requested, on all of the required coverage provided to the User Agency. All notices will name the ESCO/ Subcontractor and identify the contract number.

Insurance coverage specified in the GENERAL CONDITIONS (AIA Document A 201, 1997 Edition) to be provided by the ESCO, and any other insurance described below shall be furnished with the following minimum limits:

20.1.2.1 Workers' Compensation - Statutory - in compliance with the Compensation Law of the State. Exception: Employers liability to be \$1,000,000 when work is to be over water and involves maritime exposures.

20.1.2.2 Commercial General Liability Insurance with a combined single limit per occurrence for bodily injury and property damage. This insurance shall include coverage for bodily injury and property damage, and indicate on the Certificate of Insurance which of the seven (7) coverages required below are not included in the policy, if any:

- 1 Premises - Operations;
- 2 Broad Form Contractual Liability;
- 3 Products and Completed Operations;
- 4 Use of Contractors and Subcontractors;
- 5 Personal Injury;
- 6 Broad Form Property Damage;
- 7 Explosion, Collapse and Underground (XCU) Coverage.

*NOTE: On the certification of insurance, under the description of operations, the following wording is required: THE AGGREGATE LOSS LIMIT APPLIES TO EACH PROJECT, or a copy of ISO form CG2503 (Current form approved for use in Louisiana) shall be submitted.*

#### **COMBINED SINGLE LIMIT (CSL) - AMOUNT OF INSURANCE REQUIRED**

Type of <u>Construction</u>	Projects Under <u>\$100,000</u>	Projects \$100,001 - <u>\$1,000,000</u>	Projects Over <u>\$1,000,000</u>
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#### **New Buildings:**

-Each Occurrence/ Minimum Limit	\$500,000	\$1,000,000	\$3,000,000
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-Aggregate (Applicable to this Contract ONLY)	\$500,000	\$1,000,000	\$3,000,000
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**Renovations:**     *The building(s) value for this Project is: \$* **<User Agency: Insert Value>**

-Each Occurrence/	\$500,000***	\$1,000,000***	\$3,000,000***
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Minimum Limit	(Depends On Building Value)	(Depends On Building Value)	(Depends On Building Value)
-Aggregate (Applicable to this Contract ONLY)	\$500,000*** (Depends On Building Value)	\$1,000,000*** (Depends On Building Value)	\$3,000,000*** (Depends On Building Value)

*\*\*\*While the minimum combined single limit of \$500,000 is required for all renovations, the value of a building shall be multiplied by 10% and insurance requirements will be increased at \$1,000,000 intervals and rounded to the nearest \$1,000,000. Example: Renovation on \$33,000,000 building would require \$3,000,000 minimum combined single limit of coverage. Maximum limit required is \$5,000,000.00 regardless of building value.*

20.1.2.3 Business Automobile Liability Insurance with a combined single limit of \$1,000,000 per occurrence for bodily injury and property damage, unless otherwise indicated. This insurance shall include for bodily injury and property damage the following coverages:

- 1 Owned automobiles;
- 2 Hired automobiles;
- 3 Non-owned automobiles.

20.1.2.4 An Umbrella Policy may be used to meet minimum requirements.

20.1.3 All property losses shall be made payable to and adjusted with the User Agency.

20.1.4 All policies of insurance shall be approved by the contracting User Agency prior to the inception of any work.

20.1.5 Other insurance required is as follows:

20.1.5.1 User Agency's Protective Liability Insurance shall be furnished by the ESCO and naming the State of Louisiana as the Insured.

	Projects Under <u>\$100,000</u>	Projects \$100,001- <u>\$1,000,000</u>	Projects Over <u>\$1,000,000</u>
CSL - Each Occurrence	\$500,000	\$1,000,000	\$3,000,000

20.1.5.2 Asbestos Abatement Liability  
(required when asbestos abatement is included in the work)

The contractor or subcontractor who will be doing the asbestos abatement as outlined in this contract shall obtain and maintain such liability coverage for the asbestos abatement hazard and exposure with minimum limits of \$1,000,000 per occurrence for the duration of the project. The policy shall name the State of Louisiana, all State departments, agencies, boards and commissions as an additional insured for the project. The policy shall be written on an

"occurrence" form. Claims-made coverage is unacceptable. The insurance company shall have an A.M. Best rating of at least A-:VI or better.

20.1.6 If, at any time, any of the said policies shall be or become unsatisfactory to the User Agency, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the User Agency, the ESCO/Subcontractor shall promptly obtain a new policy, submit the same to the User Agency for approval and submit a certificate thereof as hereinabove provided.

#### 20.1.7 RISKS AND INDEMNIFICATIONS ASSUMED BY THE ESCO

Neither the acceptance of the completed work nor payment therefor shall release the ESCO/Subcontractor from his obligations from the insurance requirements or indemnification agreement.

20.1.7.1 Additional insurance may be required on an individual basis for extra hazardous contracts and specific service agreements.

If such additional insurance is required for a specific contract, that requirement will be described in the "Special Conditions" of the contract specifications.

20.1.7.2 If any of the Property and Casualty insurance requirements are not complied with at their renewal dates, payments to the ESCO/Subcontractor will be withheld until those requirements have been met, or at the option of the User Agency, the User Agency may pay the Renewal Premium and withhold such payments from any monies due the ESCO/Subcontractor.

20.1.7.3 All property losses shall be made payable to and adjusted with the User Agency.

20.1.7.4 All policies and certificates of insurance shall be approved by the contracting agency prior to the inception of any work.

20.1.7.5 If at any time any of the foregoing policies shall be or become unsatisfactory to the User Agency, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the User Agency, the ESCO/Subcontractor shall, upon notice to that effect from the User Agency, promptly obtain a new policy, submit the same to the User Agency for approval and submit a certificate thereof as hereinabove provided. Upon failure of the ESCO/Subcontractor to furnish, deliver and maintain such insurance as above provided, this Contract, at the election of the User Agency, may be forthwith declared suspended, discontinued or terminated. Failure of the ESCO/Subcontractor to take out and/or maintain or the taking out and/or maintenance of any required insurance, shall not relieve the ESCO/Subcontractor from any liability under the Contract, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations of the ESCO/Subcontractor concerning indemnification. The User Agency reserves the right to require complete, certified copies of all required insurance policies, at any time.

#### 20.1.8 SUBCONTRACTORS

ESCO shall include all subcontractors as insureds under its policies or shall furnish separate certificates from each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

#### 20.1.9 CERTIFICATE OF INSURANCE

ESCO shall furnish the User Agency with certificates of insurance affecting coverage required by this clause. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates of insurance must also contain the following in the "Description of Operations" section:

If the contractor is a General Contractor, then so state.

If the contractor is a specialty contractor, then so state and provide the list of specialties for which the contractor is insured.

The certificates are to be received and approved by the User Agency before work commences. The User Agency reserves the right to require complete, certified copies of all required insurance policies, at any time.

## 20.2 INSURANCE REQUIREMENTS FOR ESCO'S

ESCO shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the ESCO, his agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the ESCO's proposal.

### 20.2.1 MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

20.2.1.1 Insurance Services Office Commercial General Liability coverage ("occurrence") form CG 0001. (Current form approved for use in Louisiana.) "Claims Made" form is unacceptable.

20.2.1.2 Insurance Services Office form number CA 0001 (Current form approved for use in Louisiana.) covering Automobile Liability. The policy shall provide coverage for owned, hired, and non-owned coverage. If an automobile is to be utilized in the execution of this contract, and the vendor/contractor does not own a vehicle, then proof of hired and non-owned coverage is sufficient.

20.2.1.3 Workers' Compensation insurance as required by the Labor Code of the State of Louisiana, including Employers Liability insurance.

### 20.2.2 MINIMUM LIMITS OF INSURANCE

ESCO shall maintain limits no less than:



20.2.2.1 Commercial General Liability: \$500,000 combined single limit per occurrence for bodily injury, personal injury and property damage (or higher limits depending on size of contract.)

20.2.2.2 Automobile Liability: \$1,000,000 combined single limit per accident, for bodily injury and property damage.

20.2.2.3 Workers Compensation and Employers Liability: Workers' Compensation limits as required by the Labor Code of the State of Louisiana and Employers Liability coverage. Exception: Employers liability limit is to be \$1,000,000 when work is to be over water and involves maritime exposure.

## 20.2.3 DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductibles or self-insured retentions must be declared to and approved by the User Agency. At the option of the User Agency, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the User Agency, its officers, officials, employees and volunteers; or the ESCO shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

## 20.2.4 OTHER INSURANCE PROVISIONS

The policies are to contain, or be endorsed to contain, the following provisions:

### 20.2.4.1 General Liability and Automobile Liability Coverages

20.2.4.1.1 The User Agency, its officers, officials, employees, Boards and Commissions and volunteers are to be added as "additional insureds" as respects liability arising out of activities performed by or on behalf of the ESCO; products and completed operations of the ESCO, premises owned, occupied or used by the ESCO. The coverage shall contain no special limitations on the scope of protection afforded to the User Agency, its officers, officials, employees or volunteers.

It is understood that the business auto policy under "Who is an Insured" automatically provides liability coverage in favor of the State of Louisiana.

20.2.4.1.2 Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the User Agency, its officers, officials, employees, Boards and Commissions or volunteers.

20.2.4.1.3 The ESCO's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

### 20.2.4.2 Workers' Compensation and Employers' Liability Coverage

The insurer shall agree to waive all rights of subrogation against the User Agency, its officers, officials, employees and volunteers for losses arising from work performed by the ESCO for the User Agency.

#### 20.2.4.3 All Coverages

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the User Agency.

#### 20.2.5 ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers with an A.M. Best's rating of no less than A-:VI. This rating requirement will be waived for the workers' compensation coverage.

#### 20.2.6 VERIFICATION OF COVERAGE

ESCO shall furnish the User Agency with certificates of insurance effecting coverage required. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates of insurance must also contain the following in the "Description of Operations" section:

If the contractor is a General Contractor, then so state.

If the contractor is a specialty contractor, then so state and provide the list of specialties for which the contractor is insured.

The certificates are to be received and approved by the User Agency before work commences. The User Agency reserves the right to require complete, certified copies of all required insurance policies, at any time.

### 20.3 PROPERTY INSURANCE

ESCO shall purchase and maintain property insurance upon the entire work included in the contract for an amount equal to the greater of the full-completed value or the amount of the construction contract including any amendments thereto (with the exception of the following sub-limit for flood.) ESCO's policy shall provide "ALL RISK" Builder's Risk insurance (extended to include the perils of flood, collapse, vandalism/malicious mischief, and theft, including theft of materials whether or not attached to any structure.) Flood sub-limit shall equal an amount no lower than ten percent (10%) of the total contract cost per occurrence. The "All Risk" Builder's Risk Insurance must also cover architects' and engineers' fees that may be necessary to provide plans and specifications and supervision of work for the repair and/or replacement of property damage caused by a covered peril not to exceed 10% of the cost of those repair and/or replacements.

Flood coverage shall be provided by the ESCO on the first floor and below for projects North of the Interstate Corridor beginning at the Texas - Louisiana border at Interstate 10 East to the Baton Rouge junction of Interstate 12, East to Slidell junction with Interstate 10 to the Louisiana - Mississippi border. On projects South of this corridor, flood coverage shall be required on the first and second floors and below. Coverage for roofing projects shall not require flood coverage. The ESCO has the right to purchase coverage or self-insure any exposures not required by the bid specifications, but shall be held liable for all losses, deductibles, self-insurance for coverages not required.

A specialty contractor shall purchase and maintain property insurance upon the system to be installed for an amount equal to the greater of the full-completed value or the amount of the contract including any amendments thereto. The specialty contractor may provide an installation floater with the same coverage as the "ALL RISK" Builder's Risk insurance policy.

The policy shall include the interest of the User Agency, ESCO and Subcontractors as their interest may appear.

Policies insuring projects involving additions, alterations or repairs to existing buildings or structures must include an endorsement providing the following:

In the event of a disagreement regarding a loss covered by this policy which may also be covered by the State of Louisiana policy of self-insurance or any commercial property insurance policy purchased by the State of Louisiana, Office of Risk Management (ORM) covering in excess of the State of Louisiana, policy of self-insurance, this company agrees to follow the following procedure to establish coverage and/or the amount of loss:

Any party to a loss may make written demand for an appraisal of the matter in disagreement. Within 20 days of receipt of written demand, this company and either ORM or its commercial insurance company shall each select a competent and impartial appraiser and notify the other of the appraiser selected. The two appraisers will select a competent and impartial umpire. The appraisers will then identify the policy or policies under which the loss is insured and, if necessary, state separately the value of the property and the amount of the loss that must be borne by each policy. If the two appraisers fail to agree, they shall submit their differences to the umpire. A written decision by any two shall determine the policy or policies and the amount of the loss. Each insurance company (or ORM) agree that the decision of the appraisers and the umpire if involved, will be binding and final and that neither party will resort to litigation. Each of the two parties shall pay its chosen appraiser and bear the cost of the umpire equally.

## **20.4 INDEMNIFICATION CLAUSE**

The ESCO agrees to protect, defend, indemnify, save, and hold harmless the State of Louisiana, all State Departments, Agencies, Boards and Commissions, its officers, agents, servants and employees, including volunteers, from and against any and all claims, demands, expenses and liability arising out of injury or death to any person or the damage, loss or destruction of any property which may occur or in any way grow out of any act or omission of ESCO, its agents, servants, and employees, or any and all costs, expenses and/or attorney fees incurred by ESCO as a result of any claims, demands, and/or causes of action except those claims, demands, and/or causes of action arising out of the negligence of the State of Louisiana, all State Departments, Agencies, Boards, Commissions, its agents, representatives, and/or employees. ESCO agrees to investigate, handle, respond to, provide defense for and defend any such claims, demands, or suits at its sole expense and agrees to bear all other costs and expenses related thereto, even if they (claims, etc.) are groundless, false or fraudulent.

## **SECTION 21. CONDITIONS BEYOND CONTROL OF THE PARTIES**

If a party ("performing party") shall be unable to reasonably perform any of its obligations under this Contract due to acts of God, insurrections or riots, material or labor shortages, or similar events, this Agreement shall at the other party's option remain in effect but the obligations of both parties shall be suspended until the said events shall have ended. In the event that the building is destroyed, this

agreement is null and void. In the event that the building is damaged to such an extent that both parties agree that the building is beyond repair, this agreement shall be null and void.

## **SECTION 22. EVENTS OF DEFAULT**

**SECTION 22.1. Events of Default by User Agency.** Each of the following events or conditions shall constitute an "Event of Default" by User Agency:

- (i) any material failure by User Agency to perform or comply with the terms and conditions of this Agreement, including breach of any covenant contained herein, provided that such failure continues for thirty (30) days after notice to User Agency demanding that such failures to perform be cured or if such cure cannot be effected in such thirty (30) days, User Agency shall be deemed to have cured default upon the commencement of a cure within such thirty (30) days and diligent subsequent completion thereof;
- (ii) any representation or warranty furnished by User Agency in this Agreement that was false or misleading in any material respect when made.
- (iii) the filing of a bankruptcy petition whether by User Agency or its creditors against User Agency which proceeding shall not have been dismissed within 90 days of its filing, or an involuntary assignment for the benefit of all creditors of the liquidation of User Agency.

**SECTION 22.2. Events of Default by ESCO.** Each of the following events or conditions shall constitute an "Event of Default" by ESCO:

- (i) the standards of comfort and service set forth in Schedule I (Standards of Comfort) are not provided due to failure of ESCO to properly design, install, maintain, repair or adjust the Equipment except that such failure, if corrected or cured within seven (7) days after written notice by User Agency to ESCO demanding that such failure be cured, shall be deemed cured for purposes of this Contract.
- (ii) any representation or warranty furnished by ESCO in this Contract is false or misleading in any material respect when made;
- (iii) failure to furnish and install the Equipment and make it ready for use within the time specified by this Contract as set forth in Schedule A (Equipment to be Installed by ESCO) and Schedule G (Construction and Installation Schedule);
- (iv) provided that the operation of the facility is not adversely affected and provided that the standards of comfort in Schedule I (Standards of Comfort) are maintained, any failure by ESCO to perform or comply with the terms and conditions of this Agreement, including breach of any covenant contained herein except that such failure, if corrected or cured within thirty (30) days after written notice to ESCO demanding that such failure to perform be cured, shall be deemed cured for purposes of this Agreement;
- (v) any lien or encumbrance upon the equipment by any subcontractor, laborer or materialman of ESCO which is not released in thirty days;

- (vi) the filing of a bankruptcy petition whether by ESCO or its creditors against ESCO which proceeding shall not have been dismissed within 90 days of its filing, or an involuntary assignment for the benefit of all creditors or the liquidation of ESCO.
- (vii) failure by the ESCO to pay any amount due, or perform any obligation under the terms of this Agreement including failure to disclose subcontractors or other associated service providers.

### **SECTION 22.3 Remedies for Default**

- (i) If the User Agency defaults, ESCO may at its option:
  - 1. Declare all unpaid amounts then due and to become due during User Agency's fiscal year then in effect to become immediately due and payable, but only from funds legally appropriated therefor;
  - 2. Proceed, by appropriate legal action, to enforce performance by the User Agency of any and all of the User Agency's obligations under this agreement;
  - 3. Apply any amounts due the User Agency from ESCO under **Schedule C, Energy and Cost Savings Guarantee** to the unpaid payments due, with such payment not relieving the User Agency from its other obligations to perform under the terms of this Agreement.

- (ii) If ESCO defaults:

The User Agency may elect to terminate any service agreement then in effect and recover from ESCO the amount of the total Guaranteed Savings (as defined in **Schedule C, Energy and Cost Savings Guarantee** hereto) for the entire term of this Agreement and Performance Guaranty less any savings achieved or deemed achieved as of the date of termination of said service agreement. However, such termination of the service agreement shall in no way cause termination of this Contract or relieve the User Agency of its obligation to make rental payments hereunder or relieve ESCO or its assigns of their obligation to lease the Equipment to the User Agency and convey title to such Equipment in accordance herewith. All costs of dismantling, removal, disposal and/or storage of any equipment, materials or work installed through this Contract which is defective or otherwise malfunctioning at the time of ESCO default shall be borne by ESCO.

## **SECTION 23. RESOLUTION OF DISPUTES**

**SECTION 23.1. Resolution of Disputes.** Should the User Agency and the ESCO not be able to resolve a dispute by either nonbinding arbitration or mediation, then the dispute shall be resolved in accordance with the provisions of LA RS39:1524-1526.

## **SECTION 24. ASSIGNMENT**

**SECTION 24.1. Assignment by ESCO.**

- (i) The ESCO acknowledges that the User Agency is induced to enter into this Agreement by, among other things, the professional qualifications of the ESCO. The ESCO agrees that except as provided below, neither this Agreement nor any right of obligations hereunder shall be assigned in whole or in part to another firm, without the prior written approval of the User Agency.
- (ii) No ESCO shall assign any interest in this contract by assignment, transfer, or novation, without prior written consent of the State. This provision shall not be construed to prohibit the ESCO from assigning his bank, trust company, or other financial institution any money due from approved contracts without such prior written consent. Notice of any such assignment or transfer shall be furnished promptly to the state.
- (iii) The ESCO may, with prior written approval of the User Agency, which consent shall not be unreasonably withheld, utilize subcontractors, provided that any subcontractor(s) shall fully comply with the terms of this Agreement. The provisions of **Section 13 (Construction And Installation By ESCO)** pertaining to subcontracts shall apply to any and all subcontract(s). Proposed subcontractor(s) for other than installation shall be tendered to the User Agency for approval at least ten (10) days prior to execution of any such subcontract.

**SECTION 24.2. Assignment by User Agency.** User Agency may transfer or assign this Agreement and its rights and obligations herein to a successor or purchaser of the Premises or an interest therein with the consent of ESCO, which shall not be unreasonably withheld.

## **SECTION 25. REPRESENTATIONS AND WARRANTIES**

Each party warrants and represents to the other that:

- (i) it has all requisite power, authority, licenses, permits, and franchises, corporate or otherwise, to execute and deliver this Agreement and perform its obligations hereunder;
- (ii) its execution, delivery, and performance of this Agreement have been duly authorized by, or are in accordance with, its organic instruments, and this Agreement has been duly executed and delivered for it by the signatories so authorized and it constitutes its legal, valid, and binding obligation;
- (iii) its execution, delivery, and performance of this Agreement will not result in a breach or violation of, or constitute a default under any Agreement, lease or instrument to which it is a party or by which it or its properties may be bound or affected; or
- (iv) it has not received any notice, nor to the best of its knowledge is there pending or threatened any notice, of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders which would materially and adversely affect its ability to perform hereunder.

## **SECTION 26. ADDITIONAL REPRESENTATIONS OF THE PARTIES.**



**SECTION 26.1.** User Agency hereby warrants, represents and promises that:

- (i) User Agency is authorized under the Constitution and laws of the State to enter into this Agreement, each transaction contemplated hereby, and to perform all of its obligations under this Agreement.
- (ii) User Agency has provided or shall provide timely to ESCO, all records relating to energy and water usage and energy-related maintenance of Premises requested by ESCO and the information set forth therein is, and all information in other records to be subsequently provided pursuant to this Agreement will be true and accurate in all material respects; and
- (iii) User Agency has not entered into any leases, contracts or agreements with other persons or entities regarding the leasing or acquisition of water or energy efficiency equipment or the provision of energy management services for the Premises or with regard to servicing any of the energy related equipment located in the Premises. User Agency shall provide ESCO with copies of any successor or additional leases of energy efficiency equipment and contracts for management or servicing of preexisting equipment at Premises that may be executed from time to time hereafter within seven days after execution thereof.
- (iv) The authorization, approval and execution of the Agreement and all other proceedings of User Agency relating to the transactions contemplated thereby have been performed in accordance with all applicable open meeting, public records, public bidding and all other laws, rules and regulations of User Agency.

**SECTION 26.2. By ESCO.** ESCO hereby warrants, represents and promises that:

- (i) before commencing performance of this Agreement:
  - a. ESCO shall have become licensed or otherwise permitted to do business in the State
  - b. ESCO shall have provided proof and documentation of all required insurance and bonds pursuant to this Agreement.
- (ii) ESCO shall make available, upon reasonable request, documents relating to its performance under this Agreement, including contracts and subcontracts it shall enter into;
- (iii) ESCO shall use subcontractors who are qualified, licensed and bonded in this State to perform the work so subcontracted pursuant to the terms hereof;
- (iv) ESCO has all requisite authority to license the use of proprietary property, both tangible and intangible, contemplated by this Agreement;
- (v) The Equipment will meet or exceed the Acceptance Testing Standards set forth in this Agreement.
- (vi) The Equipment is or will be compatible with all other Premises mechanical and electrical systems, subsystems, or components with which the Equipment interacts, and that, as



installed, neither the Equipment nor such other systems, subsystems, or components will materially adversely affect each other as a direct or indirect result of Equipment installation or operation;

- (vii) That ESCO is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Installation and perform its obligations under this Agreement.

## **SECTION 27. LIENS, PERFORMANCE BONDS, LABOR AND MATERIAL PAYMENT BONDS**

**SECTION 27.1 Bonds.** ESCO shall furnish a Performance and Payment Bond on approved forms *<Note to User Agency: see Exhibit I; <Form of> Performance and Payment Bond for a sample of approved form. >* in an amount equal to 100% of the Contract Amount and executed by a corporate Surety licensed to transact such business in the State of Louisiana. Surety must be listed currently on the U. S. Department of Treasury Financial Management Service List (Treasury List) as approved for an amount equal to or greater than the contract amount. The expense of these bonds shall be borne by the ESCO and the bonds submitted to the User Agency prior to the time of contract execution. Such executed bonds are incorporated herein by reference as **Exhibit I (Performance and Payment Bond)**. The Bond shall be in favor of the User Agency. If, at any time, a Surety on such a bond becomes irresponsible or loses its right to do business in the State, another Surety will be required, which the ESCO shall furnish to the User Agency within ten (10) days after receipt of Notice from Surety. The Attorney in Fact who executes the required bond on behalf of the Surety shall affix thereto a certified and current copy of his power of Attorney.

**SECTION 27.2 Liens.** Notice of this Agreement and of ESCO's obligation to install the Equipment hereunder shall be recorded by ESCO with the Recorder of Mortgages for the Parish in which the work is to be performed. ESCO shall also record the Certificate of Substantial Completion and provide the User Agency with certificates issued by the Recorder of Mortgages of the Parish, after the period for the filing of liens arising out of the installation of the Equipment has expired, certifying that no liens have been filed with respect to the installation of the Equipment.

**SECTION 27.3 Recordation of Contract and Bond.** The ESCO shall record this Contract and Performance and Payment Bond within thirty (30) days with the Clerk of Court in the Parish in which the work is to be performed.

## **SECTION 28. COMPLIANCE WITH LAW AND STANDARD PRACTICES**

ESCO shall perform its obligations hereunder in compliance with any and all applicable federal, state, and local laws, rules, and regulations, in accordance with sound engineering and safety practices and in compliance with any and all reasonable rules of User Agency relative to the Premises.

## **SECTION 29. SEVERABILITY**

In the event that any clause or provision of this Agreement or any part thereof shall be declared invalid, void, or unenforceable by any court having jurisdiction, such invalidity shall not affect the validity or enforceability of the remaining portions of this Agreement unless the result would be manifestly inequitable or unconscionable or unlawful.

### **SECTION 30. COMPLETE AGREEMENT**

This Agreement, when executed, together with all Schedules attached hereto or to be attached hereto, as provided for by this Agreement shall constitute the entire Agreement between both parties.

### **SECTION 31. SUBCONTRACTS**

**SECTION 31.1 Subcontractors.** As used in this Agreement, the term “subcontractor” means a person or entity supplying both labor and materials, or labor only, for installation or maintenance related to the Equipment. Each and every subcontractor shall be properly qualified to perform the work that is the subject of such subcontract. The ESCO agrees to bind each subcontractor to all applicable terms of this Agreement. Nothing in this Agreement or otherwise shall create any contractual relationship whatsoever between any subcontractor and the User Agency.

**SECTION 31.2.** ESCO shall have the right to have any of the Work or any other obligation of ESCO undertaken in connection with the Equipment or this Energy Savings Performance Contract accomplished by Subcontractors pursuant to agreements between ESCO and such Subcontractors, which subcontracts shall require the prior written approval of the User Agency if they involve a material portion of the Work. All such subcontracts shall be subject to, consistent with and require the Subcontractors to satisfy, all applicable terms and conditions of this Energy Savings Performance Contract and shall be in conformance with all applicable Louisiana laws. Subcontractors shall be selected by ESCO, and ESCO shall be solely responsible for the satisfactory performance of Subcontractors. ESCO shall pay each Subcontractor in accordance with the terms of the subcontract between them.

**SECTION 31.2.** Any and all agreements entered into between ESCO and its subcontractors shall include the following paragraphs:

- (i) Subcontractor acknowledges and agrees that User Agency has no obligations to Subcontractor, and that Subcontractor has no rights against User Agency, under this contract. Subcontractor agrees that User Agency is not liable for the acts or omissions of the ESCO.
- (ii) Relationship Between ESCO and User Agency; No Right to Lien Property.

Subcontractor understands that the Site is on property owned by User Agency. Subcontractor is also aware that the ESCO intends to transfer the completed Facilities to User Agency at some date following the completion of the Work. Nevertheless, Subcontractor acknowledges and agrees that the owner for the purposes of this contract is the ESCO alone and that User Agency is not obligated to the Subcontractor in any way. Subcontractor agrees to each of the following and further agrees that it will require each of its sub-subcontractors (first-tier or otherwise) to agree to each of the following:

- a. All work under this contract is performed solely and exclusively for the ESCO. All rights and duties imposed upon the ESCO under this Contract are to be exercised or performed solely by the ESCO.
- b. The ESCO and User Agency are separate entities. The ESCO is not an agent for User Agency, and the ESCO has no authority to bind User Agency. User Agency is not an agent for the ESCO, and User Agency has no authority to bind the ESCO. User Agency shall have no liability for satisfaction of any claims of any nature in any way arising out of a contract between subcontractor and the ESCO.
- c. Neither User Agency nor the State of Louisiana shall be liable, directly or indirectly, for the payment of any sums whatsoever or for the performance of any obligation arising out of the work performed in connection with this contract.
- d. The ESCO has no interest in any property at the Site other than as set forth in the lease of certain property between the ESCO and User Agency. The Subcontractor hereby expressly waives, in advance, the ability to affect User Agency's and the ESCO's property interest in any way, including but not limited to any rights Subcontractor may otherwise have under Louisiana Private Works Act, La.R.S. 9:4801 et seq., by lien, claim or otherwise. Subcontractor shall include in all subcontracts and purchase orders similar language requiring such sub-subcontractors and materialmen to waive in advance any such rights against User Agency's or the ESCO's property interest. Subcontractor agrees that in the event that any sub-subcontractor breaches its obligation by placing a lien on User Agency's or the ESCO's interest in the Site, Subcontractor will remove the lien or claim, by bonding it out or otherwise, within ten (10) calendar days of the date that the lien or claim was created.
- e. All improvements resulting from this contract shall, after transfer at end of contract term, become the property of User Agency. This contract and the work performed by subcontractor and its sub-subcontractors shall not give rise to any rights against the property upon which the work is performed or against User Agency.
- f. All rights, warranties, guaranties and actions inuring to the benefit of the ESCO in connection with this contract, as well as the services and equipment furnished in connection with this contract, including warranties on equipment, material and workmanship, as well as the right to bring suit based on any theory, including breach of contract, breach of warranty, and negligence, may, following the completion of the work, be assigned to and exercised by User Agency. Regardless of such assignment, the ESCO's obligations to Subcontractor will remain the ESCO's alone, and even after an assignment of the benefits of this contract to User Agency, the Subcontractors sole right of action, if any, for alleged breaches of this contract, shall be against the ESCO.

## **SECTION 32. ORDER OF PRECEDENCE**

This Contract incorporates herein and makes a part hereof all of its Appendices, the Agency-specific Conditions set forth in Schedule N (Agency-Specific Conditions) and Special Provisions as set forth in Section 40 (Special Provisions), as well as the entire RFP and ESCO Proposal for this Project labeled Appendix A (RFP for ESCO Solicitation) and Appendix B (ESCO Proposal) respectively. Acceptance by the User Agency of the Technical Energy Audit is reflected in Exhibit II (i) (Certificate of Acceptance—Technical Energy Audit). Notwithstanding, in the event of any inconsistencies, the

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provisions of this contract and all attachments, followed by the Technical Energy Audit, followed by the RFP, then the ESCO's Proposal shall govern in that order.

### SECTION 33. FURTHER DOCUMENTS

The parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement.

### SECTION 34. APPLICABLE LAW

This Agreement and the construction and enforceability thereof shall be interpreted under the laws of the State of Louisiana. Jurisdiction and venue shall be in the 19th Judicial District Court, State of Louisiana.

### SECTION 35. NOTICE AND CONSENT

Any notice required or permitted hereunder shall be deemed sufficient if given in writing and delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, receipt obtained, to the address shown below or to such other persons or addresses as are specified by similar notice. Any consent required hereunder shall not be unreasonably withheld.

TO ESCO: *<ESCO Name, Attention, Mailing address.>*  
*<Include COPY TO: information for ESCO, if applicable.>*

TO USER AGENCY: *<User Agency Name, Attention, Mailing address.>*  
*<Include COPY TO: information for USER AGENCY, if applicable.>*

### SECTION 36. USER AGENCY'S FACILITY MAINTENANCE RESPONSIBILITIES

**SECTION 36.1.** The parties further acknowledge and agree that said Energy and Cost Savings would not likely be obtained unless certain procedures and methods of operation designed for energy and water conservation shall be implemented, and followed by User Agency on a regular and continuous basis.

**SECTION 36.2.** User Agency agrees that it shall adhere to, follow and implement the energy conservation procedures and methods of operation to be set forth on **Schedule K (User Agency's Maintenance Responsibilities)**, to be attached hereto and made a part hereof after User Agency's approval.

**SECTION 36.3.** User Agency agrees that ESCO shall have the right once a month, with prior notice, to inspect Premises to determine if User Agency is complying, and shall have complied with its obligations as set forth above in Section 35.2. For the purpose of determining User Agency's said compliance, the checklist to be set forth at **Schedule L (Facility Maintenance Checklist)** as completed and recorded by ESCO during its monthly inspections, shall be used to measure and record User Agency's said compliance. User Agency shall make the Premises available to ESCO for and during each monthly

inspection, and shall have the right to witness each inspection and ESCO's recordation on the checklist. User Agency may complete its own checklist at the same time.

## **SECTION 37. HEADINGS**

Headings and subtitles used throughout this Agreement are for the purpose of convenience only, and no heading or subtitle shall modify or be used to interpret the text of any section.

## **SECTION 38. INDEPENDENT CONTRACTOR**

The ESCO shall perform its duties hereunder as an independent contractor and not as an employee of the User Agency. Neither the ESCO nor any agent or employee of the ESCO shall be or shall be deemed to be an agent or employee of the User Agency. ESCO shall pay when due all required employment taxes and income tax withholding, shall provide and keep in force worker's compensation insurance (and show proof of such insurance) and unemployment compensation insurance in the amounts required by law, and shall be solely responsible for the acts of the ESCO, its employees and agents.

## **SECTION 39. SCHEDULES AND EXHIBITS**

The following Schedules and Exhibits are attached hereto (or will be, as provided in this Agreement) and are made a part of this Agreement by reference.

### **SECTION 39.1 Schedules**

Schedule A	Scope of Work: Equipment to be Installed by ESCO and ESCO Services
Schedule B	Description of Premises; Pre-Existing Equipment Inventory
Schedule C	Energy and Cost Savings Guarantee
Schedule D	ESCO Measurement & Verification and Service Agreement
Schedule E	Baseline Energy Consumption
Schedule F	Savings Measurement & Calculation Formulae; Methodology to Adjust Baseline
Schedule G	Construction and Installation Schedule
Schedule H	Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment
Schedule I	Standards of Comfort
Schedule J	ESCO's Maintenance Responsibilities
Schedule K	User Agency's Maintenance Responsibilities
Schedule L	Facility Maintenance Checklist
Schedule M	ESCO's Training Responsibilities
Schedule N:	Agency-Specific Conditions
Schedule O	Installment Payment Schedule and Schedule of Values
Schedule P:	Pre-Existing Service Agreements
Schedule Q:	Current And Known Capital Projects At Facility
Schedule R:	Projected Financial Performance

### **SECTION 39.2 Exhibits**

Exhibit I	Performance Bond and Payment Bond
Exhibit II (i)	Certificate of Acceptance—Technical Energy Audit
Exhibit II (ii)	Certificate of Acceptance—Installed Equipment
Exhibit III	Operations and Maintenance Manuals
Exhibit IV	Equipment Warranties
Exhibit V	Form of Letter of Credit

### **SECTION 39.3 Appendices**

Appendix A	RFP for ESCO Solicitation
Appendix B	ESCO Proposal
Appendix C	Technical Energy Audit
Appendix D:	Lease Agreements And Documents
Appendix E:	List of Associates: Names of contractors, subcontractors, consultants, financing entities, and other professional service providers used by ESCO

## **SECTION 40. SPECIAL PROVISIONS**

The signatures of the parties follow the attached Special Provisions, which Special Provisions are included as part of this Agreement.

**Termination for Cause.** The State may terminate this Contract for cause based upon the failure of the ESCO to comply with the terms and/or conditions of the Contract; provided that the State shall give the ESCO written notice specifying the ESCO's failure. If within thirty (30) days after receipt of such notice, the ESCO shall not have either corrected such failure or, in the case of failure which cannot be corrected in thirty (30) days, begun in good faith to correct said failure and thereafter proceeded diligently to complete such correction, then the State may, at its option, place the ESCO in default and the Contract shall terminate on the date specified in such notice. The ESCO may exercise any rights available to it under Louisiana law to terminate for cause upon the failure of the State to comply with the terms and conditions of this contract; provided that the ESCO shall give the State written notice specifying the State's failure and a reasonable opportunity for the state to cure the defect.

**Termination for Convenience.** The State may terminate the Contract at any time by giving thirty (30) days written notice to the ESCO. The ESCO shall be entitled to payment for deliverables in progress, to the extent work has been performed and provided that work has been performed satisfactorily.

**Reporting:** Upon request by User Agency, by the Commissioner of Administration or his designated agent or by the Legislative Auditor, an ESCO shall provide any working documents, accounting records or other materials relating to costs, pricing or any other aspect of the ESCO's performance pursuant to a performance contract. Documents, records or other materials provided by an ESCO shall be subject to review and verification by User Agency, by the Commissioner of Administration or his designated agent, by the Legislative Auditor, or by an independent third party selected by User Agency, by the Commissioner of Administration or by the Legislative Auditor.

The ESCO shall produce and present to User Agency and to the Office of Facility Planning and Control, on an at least annual basis, performance reports for this Contract. The ESCO's reports to User Agency and FP&C shall include at a minimum the following:



- Name of User Agency
- ESCO's name and address
- Whether the payment obligation under the performance contract is either:
  - Set as a percentage of the annual energy cost savings attributable to the services or equipment under the performance contract; or
  - Guaranteed by the ESCO to be less than the annual energy cost savings attributable to the services or equipment under the performance contract
- Total annual savings guaranteed by the ESCO
- Total amount User Agency is required to pay under the performance contract and the term of the contract
- Total amount paid to date by User Agency and the amount paid each year to date under the performance contract.
- Any costs paid by User Agency which were associated with the set-up or maintenance of the performance contract or with repair or maintenance of the equipment used under the performance contract
- The annual cost to User Agency of energy or other utilities beginning two years prior to operation of the performance contract and during the operation of the performance contract
- The annual energy cost savings each year, shown also as a percentage of the annual amount to be paid by User Agency under the performance contract.
- Annual maintenance cost savings for each year. Maintenance savings means operating expenses eliminated and future capital replacement expenditures avoided by User Agency as a result of new equipment installed or services performed by the ESCO.

**Cost Estimates.** The Contract must state the cost of each measure as a part of the Energy and Cost Savings Guarantee. Provide a separately itemized list of costs and savings associated with each proposed Energy Cost Savings Measure (ECSM).

**Annual Savings :** The Contract must state the guaranteed energy or other utilities and operational and maintenance cost savings for each measure for each year during the contract period year as a part of the Energy and Cost Savings Guarantee.

**Allowable Payment Sources:** Payment sources to support the capital investment payments are as defined in La. R.S. 39:1496.1 and LAC 34:V.Chapter 1,Subchapter A, Section 6.a

**Administrative Fee:** At the time of Contract execution, ESCO shall submit a certified or cashier's check, payable to the Commissioner of Administration or his designated agent, in a sum equal to **<Insert appropriate percentage>**% of the total value of the Contract. **<Note to User Agency: Contact the Division of Administration, Office of Facility Planning and Control prior to issuing the RFP. The appropriate percentage for each project will be set at a sum not greater than 2 ½% in consultation with DOA.>**

**Equipment Compatibility or Standardization.** All equipment or systems installed that are comparable to similar equipment or systems at the facility(ies), shall provide functions, features and operability that are, at a minimum, equal to the existing equipment and systems. Installed equipment and systems shall meet all standards for such equipment established by the latest version of Facility Planning and Control's "Instructions to Designers & Procedure Manual." Equipment shall be selected so as to minimize, to the extent practical, the number and type of service parts and materials needed on site and shall consider the



future likelihood of availability during the full term of the contract. This applies to all main mechanical, electrical and control equipment.

**SECTION 40.1. Fiscal Funding.** The continuation of this contract is contingent upon the appropriation of funds by the legislature to fulfill the requirements of the contract. If the legislature fails to appropriate sufficient monies to provide for the continuation of the contract, the contract shall terminate on the last day of the fiscal year for which funds have been appropriated. Such termination shall be without penalty or expense to the agency, board, or commission except for payments which have been earned prior to the termination date.

**SECTION 40.2. Discrimination Clause.** The ESCO agrees to abide by the requirements of the following as applicable: Title VI and VII of the Civil Rights Act of 1964, as amended by the Equal Opportunity Act of 1972, Federal Executive Order 11246, the Federal Rehabilitation Act of 1973, as amended, the Vietnam Era Veteran's Readjustment Assistance Act of 1974, Title IX of the Education Amendments of 1972, the Age Act of 1975, and ESCO agrees to abide by the requirements of the Americans with Disabilities Act of 1990.

ESCO agrees not to discriminate in its employment practices, and will render services under this contract without regard to race, color, religion, sex, sexual orientation, national origin, veteran status, political affiliation, or disabilities.

Any act of discrimination committed by ESCO, or failure to comply with these statutory obligations when applicable shall be grounds for termination of this Contract.

**SECTION 40.3. Auditors.** It is hereby agreed that the Legislative Auditor of the State of Louisiana and/or the Office of the Governor, Division of Administration auditors shall have the option of auditing all accounts of ESCO which relate to this contract. Books and records shall be maintained by the ESCO for a period of three years after the date of final payment under the Contract and by the subcontractors for a period of three years after the date of final payment under subcontracts.

**SECTION 40.4. Disclosure of Subcontractors and Other Parties.** The ESCO agrees, upon the execution of this Contract, that it will furnish to User Agency (in **Appendix E**), FP&C, and the Legislative Auditor's Office a list of names of all contractors, sub-contractors, consultants, financing entities and other professional service providers (i.e., ESCO's Associates) that it has used, has under contract, or plans to use in fulfilling the terms of the Contract. On each anniversary date of the date that this contract was entered into, the ESCO agrees to furnish to User Agency an updated list of the names of all contractors, sub-contractors, consultants, financing entities and other professional service providers that it has used, has under contract, or plans to use in fulfilling the terms of the Contract.

**SECTION 40.5. Amendments and Change Orders.** All amendments and/or change orders to the Contract shall be proposed in writing and submitted to the Commissioner of Administration or his designated agent for review and approval prior to execution. Amendments and change orders must be in accord with all terms of the Contract guarantee provisions.

**SECTION 40.6. Special Contract Terms and Conditions.**

- A. The ESCO shall provide 24-hour emergency repair service on any equipment installed by the ESCO which is critical to the operation of the facilities. The ESCO shall also provide training in the proper operation and maintenance of said improvements and equipment to User Agency's in-house maintenance staff through the term of the contract and shall train User Agency's personnel at termination of the contract on proper maintenance procedures.

This training shall take the form of the training classes and training videotapes as outlined in proposal.

- B. The standards of service provided for the facilities including heating, ventilation, air conditioning, temperature and humidity shall be in accordance with the requirements of the American Society of Heating, Refrigeration and Air Conditioning Engineers.
- C. The standards of service provided for the facilities in lighting shall be made in accordance with the recommended light levels as set forth by the Illuminating Engineering Society of North America Guidelines and the Louisiana Sanitary Code, whichever standard is more stringent.
- D. All engineering and design work related to the installation or modification of facilities shall be reviewed by the User Agency and Facility Planning before signing the contract for construction. All design documents shall be in accordance with Facility Planning and Control Instructions to Designers including all referenced guidelines and standards. All installation and construction work shall be performed by contractors licensed in the State of Louisiana.
- E. Key personnel assigned to this project by the ESCO and its subcontractors shall be subject to prior written approval of User Agency. Such approval shall not be unreasonably withheld.
- F. The ESCO shall be responsible for obtaining all permits and related permit fees associated with the Work and Services including appropriate code reviews including but not limited to the State Fire Marshal and Office of Public Health. The ESCO shall pay sales, consumer, use, and other similar taxes and shall secure and pay for the building permit and other permits and governmental fees, licenses, and inspections necessary for proper execution. User Agency shall be responsible for real estate and personal property taxes where applicable. User Agency shall be responsible for securing any necessary approvals, easements, assessments, or zoning changes.
- G. The ESCO shall provide a 100% performance and 100% payment bond in the amount of all labor, materials, and equipment installed for the User Agency.
- H. The ESCO shall present to User Agency, all warranties, shop drawings, operating manuals, schematics, etc., at the completion of equipment installation.
- I. The level of quality of lighting, temperature, comfort, and humidity shall in no case be compromised. User Agency shall survey and monitor certain areas for adherence to the level of performance at original installation. Any equipment failing to perform at the original level shall be replaced immediately.
- J. ESCO WILL NOT BE ALLOWED TO USE THE SALES TAX EXEMPT STATUS FOR USER AGENCY IN ORDER TO PURCHASE EQUIPMENT.

THUS DONE AND SIGNED at **<Insert name of city and state.>** on the day, month and year first written below.

IN WITNESS WHEREOF, the parties have executed this Agreement as of this day of

\_\_\_\_\_  
(enter date)

**WITNESS SIGNATURES:**

\_\_\_\_\_  
\_\_\_\_\_

**USER AGENCY SIGNATURES:**

**By:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**WITNESS SIGNATURES:**

\_\_\_\_\_  
\_\_\_\_\_

**ESCO SIGNATURE:**

**By:** \_\_\_\_\_

**Tax I.D. #** \_\_\_\_\_

**Telephone:** \_\_\_\_\_

## **ATTACHMENTS: Schedules, Exhibits, Appendices**

### **SCHEDULE A: SCOPE OF WORK: EQUIPMENT TO BE INSTALLED BY ESCO AND ESCO SERVICES**

*< Section Overview & Comments: This schedule will be furnished by the ESCO based on the final Technical Energy Audit. It should specify all work to be performed, services that will be provided, and equipment that will be installed including manufacturer, quantity, location and warranties. This schedule should also describe any modifications that may be made to existing equipment, if applicable.>*

### **SCHEDULE B: DESCRIPTION OF PREMISES; PRE-EXISTING EQUIPMENT INVENTORY**

*<Note to User Agency: Schedule B: This schedule is based on the final Technical Energy Audit. It contains basic information about the condition of the premises at the time of contract execution. Such information would include facility square footage, building construction, use, occupancy, hours of operation etc., and any special conditions that may exist.*

*The inventory is important to include for the purpose of identifying what equipment was in place and how it was configured at the time of contract execution. This schedule is important to the accurate establishment of baseline, savings measurement and may need to be referred to in the later years of the contract.>*

### **SCHEDULE C: ENERGY AND COST SAVINGS GUARANTEE**

*< Section Overview & Comments: This schedule must fully describe all provisions and conditions of the energy saving guarantee provided by the ESCO. The guarantee must be defined in units of energy to be saved for the duration of the contract term and provide the mechanism to calculate dollar savings. The method of annual reconciliation of achieved vs. guaranteed savings must be included (there is also language in the body of the contract regarding annual reconciliation See Section 6.3). Guidelines for the guarantee were established in the RFP, to ensure compliance with RFP intent. This schedule must contain the guaranteed energy, electrical demand, and water savings in units of energy, demand, water and dollars as well as the operational and maintenance savings and/or costs for each ECSM in each year of the contract. The pre-determined baseline unit cost for each type of unit and the energy cost escalation rate, if any, must be stated explicitly. These guarantees shall be broken down on a measure-by-measure basis and fulfill all requirements established by LA R.S. 1496.1.C(2). If there are several buildings involved in the project, this schedule should contain projections for each building, even though they may all be covered under a single guarantee.>*

### **SCHEDULE D: ESCO MEASUREMENT & VERIFICATION AND SERVICE AGREEMENT**

*< Section Overview & Comments: This must contain the amount and frequency of any payments to be made to the ESCO for Measurement & Verification, maintenance, monitoring or other services negotiated as part of the Contract and a detailed scope of services to be provided. It must contain information about how the compensation is calculated (e.g. flat fee etc.) and, if an annual inflation*

*index is to be used to escalate fees over the duration of the contract term, the escalation rate and conditions must be stated explicitly. >*

## **SCHEDULE E: BASELINE ENERGY CONSUMPTION**

*<Section Overview & Comments: The baseline energy consumption is the "yardstick" by which all savings achieved by the installed project will be measured. The methodology and all supporting documentation used to calculate the baseline must be in this schedule including unit consumption and current utility rates for each fuel type. This schedule must also include baseline documentation regarding operational and maintenance cost savings such as material savings (e.g. bulbs, ballast, filters, chemicals etc.), and cost savings associated with the elimination of outside maintenance contracts. >*

*<For each site or project, the baseline and post-installation energy use must be defined using metering, billing analysis and/or engineering calculations (including computer simulations) either individually or in combination. In addition, values for any factors that affect energy use and savings that are beyond the ESCO's control that will be stipulated in the guarantee must be supported using historical data, analyses, results of spot or short-term metering, etc. The User Agency shall have the opportunity to verify the baseline.*

*<Baseline physical conditions (equipment inventory and conditions, occupancy, nameplate data, energy consumption rate, control strategies, etc.) must be determined through well-documented audits, surveys, inspections and/or spot or short-term metering. This documentation will define the baseline for calculating savings and documenting baseline conditions in case future changes require baseline energy use adjustments.>*

## **SCHEDULE F: SAVINGS MEASUREMENT & CALCULATION FORMULAE; METHODOLOGY TO ADJUST BASELINE**

*< Section Overview & Comments: This schedule must contain a description of the energy savings measurement, monitoring and calculation procedures that will be used to verify and compute the savings performance of the completed project. This calculation must include a method to compare the level of energy that would have been consumed without the project (referred to as the "Baseline") with the amount of energy that was actually consumed during a specific time period (monthly, quarterly, etc.). All methods of measuring savings including engineering calculations, metering, equipment run times, pre- and post-installation measurements, etc. must be explicitly described.*

*Periodically (typically on an annual basis), the baseline will be adjusted to account for the prevailing conditions (e.g., weather, billing days, occupancy, etc.) during the measurement period. The frequency of baseline adjustments must be stated explicitly in this schedule. All methodologies used to account for any adjustments to the baseline must be clearly defined in this schedule.>*

*Examples of baseline changes requiring adjustments include: change in the amount of space being air conditioned, changes in auxiliary systems (towers, pumps, etc.), and changes in occupancy or schedule. For example, if a chiller retrofit was completed in a building with 100,000 square feet of conditioned space and during the contract term the conditioned space is reduced to 75,000 square feet, post-installation energy use would be lower making savings appear higher. If there are no records of the amount of originally conditioned space, the baseline can not be adjusted. Baseline*

*adjustments for issues such as changes in production shifts, facility closures, adding new wings or loads (such as computer labs) require a specific approach to be determined for each eventuality. Clearly predictable annual variations are handled through established procedures for each identified factor in the savings formulas. Permanent changes, such as changes in square footage, are made through agreement clauses that allow predictable or expected changes and/or through a “re-open” clause that allows either party to renegotiate the baseline.>*

*<A Facility Changes Checklist or other method may be provided by the ESCO for the User Agency to notify the ESCO of any changes in the facility that could have an impact on energy use (occupancy, new equipment, hours of use, etc.). This checklist is generally submitted on a monthly or quarterly basis.>*

#### **SCHEDULE G: CONSTRUCTION AND INSTALLATION SCHEDULE**

*< Section Overview & Comments: The timetables and milestones for project construction and installation must be contained in this schedule. >*

#### **SCHEDULE H: SYSTEMS START-UP AND COMMISSIONING; OPERATING PARAMETERS OF INSTALLED EQUIPMENT**

*< Section Overview & Comments: This section must specify the performance testing procedures that will be used to start-up and commission the installed equipment and total system. The User Agency must be notified of and have the right to be present during all commissioning procedures. This schedule should contain a provision for the documentation of the User Agency’s attendance at the various tests and acceptance of the ESCO’s certification that the tests followed the specified procedures and meet or exceed the expected results. Use of manufacturers’ start up and performance specifications, parameters and procedures are required.*

*<The operating parameters must contain any specified parameters for the operation of the installed equipment such as temperature setbacks, equipment run times, load controlling specifications and other conditions for the operation of the equipment.>*

#### **SCHEDULE I: STANDARDS OF COMFORT**

*< Section Overview & Comments: The standards of comfort to be maintained for heating, cooling, lighting levels, hot water temperatures, humidity levels and/or any special conditions for occupied and unoccupied areas of the facility must be explicitly described in this schedule. >*

#### **SCHEDULE J: ESCO’S MAINTENANCE RESPONSIBILITIES**

*<Section Overview & Comments: A complete description of the ESCO's specific operations and maintenance responsibilities must be included in this schedule along with the time intervals for their performance of the stated Operation and Maintenance activities.>*

#### **SCHEDULE K: USER AGENCY'S MAINTENANCE RESPONSIBILITIES**



*< Section Overview & Comments: This schedule describes the operations and maintenance responsibilities that may be assigned to facility staff as agreed to by both parties. In some instances it will contain no more than a description of routine O&M currently being performed on existing energy consuming equipment in the facility. In other cases, facility staff may be used to provide some maintenance on the new equipment installed under the performance contract, with the ESCO providing any specialized services as needed.>*

#### **SCHEDULE L: FACILITY MAINTENANCE CHECKLIST**

*<Section Overview & Comments: This checklist is a method by which the ESCO may record and track compliance with operations and maintenance procedures performed by facility personnel. The checklist typically specifies a simple list of tasks and the corresponding schedule for the performance of the prescribed procedures. Facility staff will complete the checklist and forward it to the ESCO, usually on a monthly basis. (This checklist is a very useful tool for both the ESCO and User Agency to verify that the required maintenance activities are being performed at the scheduled intervals).>*

#### **SCHEDULE M: ESCO'S TRAINING RESPONSIBILITIES**

*<Section Overview & Comments: The description of the ESCO's training program or sessions for facility personnel must be contained in this schedule. The duration and frequency of the specified training must also be included..>*

#### **SCHEDULE N: AGENCY-SPECIFIC CONDITIONS**

*<Note to User Agency: Where applicable, insert any terms or conditions that are specifically required by the User Agency that are not otherwise addressed in this contract. Describe in detail any special requirements that apply to this contract.>*

#### **SCHEDULE O: INSTALLMENT PAYMENT SCHEDULE AND SCHEDULE OF VALUES**

*< Section Overview & Comments: This schedule contains the amortized financing payments to be made to the financing institution for the capitalized costs (principal and interest) of the project. This schedule will indicate the frequency (monthly, quarterly, semi-annually) of payment and the specific amount due. Payments must be based on actual measurements comparing post-retrofit improvements to building performance before the installation of any energy systems and service improvements. Payments for capital improvements shall be structured as payments at constant intervals to be made by User Agency through the term of the agreement. The actual lease agreement and associated documents are located in Appendix D. The Schedule of Values describes the payout and any buyout provisions. Include cost of each individual energy conservation measure (ECM).>*

#### **SCHEDULE P: PRE-EXISTING SERVICE AGREEMENTS**

*< Section Overview & Comments: Include information on the scope and cost of pre-existing equipment service contracts, if any. This gives the User Agency and ESCO information about how and when existing equipment is being serviced. If the ESCO is credited with any maintenance savings or is taking over any existing service contracts, the scopes and costs of these agreements will*



*be useful in tracking the performance of the ESCO in providing required services and documenting attributable cost savings.>*

#### **SCHEDULE Q: CURRENT AND KNOWN CAPITAL PROJECTS AT FACILITY**

*<Section Overview & Comments: Include a description or discussion of any current or planned capital projects to be implemented. This information could prove useful in the out-years of the contract to avoid potential disputes over long-term energy savings performance. An installment payment/amortization schedule may need to be included depending on the type of financing used.>*

#### **SCHEDULE R: PROJECTED FINANCIAL PERFORMANCE**

*<Section Overview & Comments: This schedule must include a spreadsheet depiction of expected financial performance of the project for the entire contract term. It must clearly identify all financial components of the project including interest rates, current fuel prices, any escalation rates to be applied, guaranteed savings, ESCO compensation figures, cash-flow projections and projected Net Present Value of any cumulative positive cash flow benefits to the User Agency.>*

**EXHIBITS**

**EXHIBIT I: PERFORMANCE AND PAYMENT BOND**

**EXHIBIT II (i) : CERTIFICATE OF ACCEPTANCE—TECHNICAL ENERGY AUDIT**

**EXHIBIT II (ii): CERTIFICATE OF ACCEPTANCE—INSTALLED EQUIPMENT**  
(To be furnished at time of project completion.)

**EXHIBIT III: OPERATIONS AND MAINTENANCE MANUALS**  
(To be furnished at time of project completion.)

**EXHIBIT IV: EQUIPMENT WARRANTIES**  
(To be furnished at time of project completion.)

**EXHIBIT V: AS-BUILT DRAWINGS**  
(To be furnished at time of project completion.)

## **EXHIBIT I**

### **PERFORMANCE AND PAYMENT BOND**

To these presents personally came and intervened \_\_\_\_\_, herein acting for **<Name of Surety>**, a corporation organized and existing under the laws of the State of \_\_\_\_\_, and duly authorized to transact business in the State of Louisiana, as Surety, who declared that having taken cognizance of this contract and of the Contract Documents mentioned herein, he hereby in his capacity as its Attorney in Fact obligates his said company, as Surety for the said ESCO, unto the said User Agency, up to the sum of **<Contract Amount>**.

**<Name of ESCO>**, hereinafter called the "ESCO", whose business address is:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

shall furnish all labor and materials and perform all of the work required to build, construct and complete in a thorough and workmanlike manner:

**<Name of Energy Savings Performance Contract>**

in strict accordance with the Contract Documents.

The condition of this performance and payment bond shall be that should the ESCO herein not perform the contract in accordance with the terms and conditions hereof, or should said ESCO not fully indemnify and save harmless the User Agency, from all cost and damages which it may suffer by said ESCO's non-performance or should said ESCO not pay all persons who have and fulfill obligations to perform labor and/or furnish materials in the prosecution of the work provided for herein, including by way of example workmen, laborers, mechanics, and furnishers of materials, machinery, equipment and fixtures, then said Surety agrees and is bound to so perform the contract and make said payment(s).

Provided, that any alterations which may be made in the terms of the contract or in the work to be done under it, or the giving by the User Agency of any extensions of time for the performance of the contract, or any other forbearance on the part of either the User Agency or the ESCO to the other shall not in any way release the ESCO or the Surety from their liability hereunder, notice to the Surety of any such alterations, extensions or other forbearance being hereby waived.

In Witness whereof, the parties hereto on the day and year first above written have executed this agreement in seven (7) counterparts, each of which shall, without proof or accountancy for the other counterparts, be deemed an original thereof.

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

STATE OF LOUISIANA  
**<Name of USER AGENCY>**  
USER AGENCY  
BY: \_\_\_\_\_

BY: \_\_\_\_\_  
SURETY

BY: \_\_\_\_\_  
ATTORNEY IN FACT

\_\_\_\_\_  
ADDRESS  
\_\_\_\_\_

TELEPHONE NUMBER

**EXHIBIT II (i)**

**CERTIFICATE OF ACCEPTANCE—TECHNICAL ENERGY AUDIT**

**ENERGY SAVINGS PERFORMANCE CONTRACT  
CERTIFICATE OF ACCEPTANCE  
TECHNICAL ENERGY AUDIT**

AGENCY: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ESCO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

FACILITY: \_\_\_\_\_

PROJECT NAME: \_\_\_\_\_

SITE CODE: \_\_\_\_\_

The User Agency hereby accepts the Technical Energy Audit prepared by the ESCO. ESCO attests that the Technical Energy Audit meets the standards and requirements set forth in the Contract and the Request for Proposals. Technical Energy Audit must contain an estimate of the acquisition-cost weighted average useful service life of the recommended ECSM's showing that such useful life exceeds the length of term of Contract for this acceptance to be valid. This Certificate of Acceptance will not be valid until it has been date stamped as received by Office of Contract Review.

DATE OF ACCEPTANCE: \_\_\_\_\_

Signed: \_\_\_\_\_  
User Agency Representative

Date: \_\_\_\_\_

Signed: \_\_\_\_\_  
ESCO Representative

Date: \_\_\_\_\_

c: Facility Planning & Control  
Office of Contract Review

**EXHIBIT II (ii)**

**CERTIFICATE OF ACCEPTANCE—INSTALLED EQUIPMENT**

**ENERGY SAVINGS PERFORMANCE CONTRACT  
CERTIFICATE OF ACCEPTANCE  
INSTALLED EQUIPMENT**

AGENCY: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ESCO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

FACILITY: \_\_\_\_\_

PROJECT NAME: \_\_\_\_\_

SITE CODE: \_\_\_\_\_

User Agency hereby accepts Equipment furnished and installed by ESCO as listed and described in **Schedule A (Scope of Work: Equipment to be Installed by ESCO and ESCO Services)** upon condition that all equipment warranties, operation and maintenance manuals and as-built drawings have been delivered to User Agency and this Certificate of Acceptance has been date stamped as received by Office of Contract Review.

DATE OF ACCEPTANCE: \_\_\_\_\_

Signed: \_\_\_\_\_  
User Agency Representative

Date: \_\_\_\_\_

Signed: \_\_\_\_\_  
ESCO Representative

Date: \_\_\_\_\_

c: Facility Planning & Control  
Office of Contract Review

## **APPENDICES**

### **APPENDIX A: RFP FOR ESCO SOLICITATION**

### **APPENDIX B: ESCO PROPOSAL**

### **APPENDIX C: TECHNICAL ENERGY AUDIT**

### **APPENDIX D: LEASE AGREEMENTS AND DOCUMENTS**

### **APPENDIX E: LIST OF ASSOCIATES: NAMES OF CONTRACTORS, SUBCONTRACTORS, CONSULTANTS, FINANCING ENTITIES, AND OTHER PROFESSIONAL SERVICE PROVIDERS USED BY ESCO**



***<Note to User Agency: Attachment I and Attachment J on the following pages contain standard forms and reference documents for your use in developing a performance contract. They are not a part of the Model Energy Savings Performance Contract document. >***

**RFP for Energy Savings Performance Contracting Services**  
**Attachment I: Project History Form**

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**ATTACHMENT I: PROJECT HISTORY FORM**

<b>ESCO Contact Information</b>	
Contact person:	
Phone number:	
Email:	
<b>Project Name:</b>	
<b>Project Identification:</b>	
Project owner:	
Type of project:	<input type="checkbox"/> <i>health/hospital</i>
	<input type="checkbox"/> <i>k-12 schools</i>
	<input type="checkbox"/> <i>college/university</i>
	<input type="checkbox"/> <i>state/local government</i>
	<input type="checkbox"/> <i>Residential</i>
	<input type="checkbox"/> <i>Other:</i> _____
Location:	
City:	
State:	
<b>Project dates (start &amp; end):</b>	_____ to _____
<b>Project Schedule (completed on time):</b>	<input type="checkbox"/> yes <input type="checkbox"/> no
<i>if no, please explain:</i>	
<b>Project Size:</b>	
Number of buildings:	
Total square footage:	
Total contract amount:	
Total project capital cost:	
<b>Contract Terms:</b>	
Type of contract:	<input type="checkbox"/> <i>shared-savings</i>
	<input type="checkbox"/> <i>lease purchase</i>
	<input type="checkbox"/> <i>guaranteed savings</i>
Contract term:	
Arrangement of financing:	
Source of Funds :	

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## RFP for Energy Savings Performance Contracting Services

### Attachment I: Project History Form

[illegible]

## RFP for Energy Savings Performance Contracting Services

### Attachment I: Project History Form

**Comments:**

Comment on any special features.

[illegible]

### References:

List name & contact information of User Agency(s)' representatives

[illegible]

**Title 34**  
**GOVERNMENT CONTRACTS, PROCUREMENT**  
**AND PROPERTY CONTROL**

**Part V. Procurement of Professional, Personal,**  
**Consulting and Social Services**

**Chapter 1. Procurement of Professional, Personal, Consulting and Social Services**

**Subchapter A. General Provisions**

**§105. Performance-Based Energy Efficiency Contracting**

**A. Preparation of Requests for Proposals**

1. Performance contracts shall be considered to be consulting services contracts under the provisions of Title 39, Chapter 16 of the Louisiana Revised Statutes and shall be awarded in accordance with the provisions of that Chapter, the rules and regulations promulgated by OCR pursuant to that Chapter, and this Section.

2. Prior to its preparation of an RFP, a state agency, as defined in R.S. 39:2 (hereinafter, "user agency") shall perform a needs analysis in accordance with the provisions of Title 39, Chapter 16 of the Louisiana Revised Statutes and the rules and regulations promulgated by the Division of Administration, through its Office of Contractual Review ("OCR") pursuant to that Chapter. Such needs analysis shall be in a form approved by the Commissioner of Administration or his designated agent and shall include a detailed audit of energy use.

3. Prior to its preparation of an RFP, a user agency shall submit its needs analysis to the Commissioner of Administration or his designated agent for approval.

4. Upon approval of a user agency's needs analysis pursuant to this Section, such user agency shall prepare an RFP in a form approved by OCR, which form shall require proposers to separately itemize the costs and savings associated with each proposed energy cost savings measure ("ECSM"). In accordance with the provisions of Title 39, Chapter 16 of the Louisiana Revised Statutes and the rules and regulations promulgated by OCR pursuant to that Chapter, every RFP shall indicate the relative importance of price and other evaluation factors, shall clearly define the tasks to be performed under the performance contract, the criteria to be used in evaluating the proposals and the time frames within which the work must be completed. Prior to advertising its RFP, a user agency shall submit it to the Commissioner of Administration or his designated agent and obtain his written consent to the advertisement of the RFP.

5. Upon approval of a user agency's RFP, such user agency shall advertise its RFP in accordance with the provisions of Title 39, Chapter 16 of the Louisiana Revised Statutes and the rules and regulations promulgated by OCR pursuant to that Chapter.

**B. Evaluation of Submitted Proposals**

1. A user agency shall review any proposals it timely receives in response to its RFP and shall submit to the Office of Facility Planning and Control ("FPC") the results of its

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review, along with each proposal that is responsive and responsible and otherwise in accordance with the provisions of Title 39, Chapter 16 of the Louisiana Revised Statutes, the rules and regulations promulgated by OCR pursuant to that Chapter, and this Section. A user agency shall not make a final selection from among the proposals it submits to FPC.

2. Prior to the award of any performance contract, FPC shall evaluate all proposals submitted by a user agency for that performance contract. In its evaluation, FPC shall include suggestions, if appropriate, for the resolution of any unique issues arising in connection with a particular proposed performance contract. FPC's evaluation shall also include, but not be limited to, a consideration of the following:

a. whether proposed ECSMs are in compliance with the provisions of R.S. 39:1496.1;

b. whether proposed ECSMs will generate net savings, as those terms are defined in Subsection E of this Section; and

c. whether the proposed protocol for measuring and verifying the energy savings guaranteed in the contract conforms to the latest standards set forth by the International Performance Measurement and Verification Protocol.

3. FPC shall, within 60 days of the receipt of the submitted proposals, forward to the Commissioner of Administration or his designated agent its written evaluation of the submitted proposals, along with the results of the review of the submitted proposals by the user agency. FPC shall not make a final selection from among the proposals it forwards to the Commissioner of Administration except if FPC has been designated as the Commissioner's agent for that specific purpose.

4. Prior to the award of any performance contract, the Commissioner of Administration or his designated agent may retain an independent consultant in accordance with this Section. Such independent third-party consultant shall evaluate all proposals and written evaluations submitted to the Commissioner of Administration or his designated agent. Such evaluation shall be in accordance with the provisions of Title 39, Chapter 16 of the Louisiana Revised Statutes, the rules and regulations promulgated by OCR pursuant to that Chapter, and this Section. After completing its evaluation, an independent consultant shall submit to the Commissioner of Administration or his designated agent the written results of such evaluation. An independent consultant shall not make a final selection from among the proposals it evaluates.

5. Prior to retaining an independent third-party consultant pursuant to this Section, the Commissioner of Administration or his designated agent shall require every proposed independent consultant to execute a written certification verifying that he or she has no direct conflict of interest as to the user agency that requested the proposals to be evaluated, the proposals themselves and/or those who submitted the proposals to the user agency. Such written certification shall be in a form approved by the legislative auditor. In order to assist the legislative auditor in verifying the independence of a proposed independent consultant, such proposed independent consultant shall provide to the legislative auditor any documentation or information the legislative auditor requests. A proposed independent consultant shall not be retained, unless the legislative auditor has determined that such proposed independent consultant has no direct conflict of interest as to the user agency that requested the proposals to be evaluated, the proposals themselves and/or those who submitted the proposals to the user agency.

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6. After completing his review of the submitted proposals and evaluations prepared by the independent consultant, if any, pursuant to this Section, the Commissioner of Administration or his designated agent shall provide written notification to a user agency that the Commissioner of Administration or his designated agent has consented to the award of a performance contract to a specified energy services company ("ESCO") or that he has not consented to the award of a performance contract. Pursuant to the provisions of Title 39, Chapter 16 of the Louisiana Revised Statutes, the rules and regulations promulgated by OCR pursuant to that Chapter, and this Section, such consent shall be given to the responsible ESCO whose proposal is determined by the Commissioner of Administration or his designated agent to be the most advantageous to the state of Louisiana, taking into consideration all of the evaluation factors set forth in the RFP, as well as any evaluations or recommendations provided by the user agency, and the independent consultant, if any. In the event that the Commissioner of Administration or his designated agent determines that consent to the award of a performance contract would not be advantageous to the state of Louisiana, he shall provide the user agency with written reasons for his decision to withhold his consent.

7. Except as explicitly set forth in this Section, no party shall disclose information derived from submitted proposals prior to the consent by the Commissioner of Administration or his designated agent to the award of a performance contract to a specified ESCO.

**C. Negotiation of Performance Contracts**

1. A user agency shall negotiate with an approved ESCO a performance contract in a form approved by OCR. The process of such negotiation shall be in accordance with the provisions of Title 39, Chapter 16 of the Louisiana Revised Statutes, the rules and regulations promulgated by OCR pursuant to that Chapter, and this Section. The Commissioner of Administration or his designated agent may require that an independent consultant retained pursuant to this Section participate on behalf of a user agency in the negotiation of a performance contract with an approved ESCO.

a. Notwithstanding any other provisions of this Section, every performance contract negotiated pursuant to this Section shall set forth the total units of energy saved, the method, device or financial arrangement to be used to establish the amount of such savings, the cost per unit of energy and, if applicable, the basis for any adjustment in the cost per unit of energy during the term of the contract.

b. Notwithstanding any other provisions of this Section, every performance contract negotiated pursuant to this Section shall, with respect to each ECSM included in such performance contract and in addition to fulfilling any other requirements set forth in this Section, state the following:

- i. the detailed scope of work to be performed pursuant to the performance contract;
- ii. the initial price to be paid by the user agency;
- iii. the annual energy cost savings guaranteed by the ESCO;
- iv. the annual maintenance savings guaranteed by the ESCO, including, but not limited to, services, parts, materials, labor and equipment;
- v. the annual new maintenance costs, including operating expenses added as a result of new equipment installed or service performed by the ESCO; and



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- vi. the total annual savings guaranteed by the ESCO. *Total annual savings* means annual energy cost savings plus annual maintenance savings minus annual new maintenance costs.
- c. Notwithstanding any other provisions of this Section, no payment shall be made to an ESCO pursuant to a performance contract unless such performance contract complies with Paragraph C.1.
- 2. The term of every performance contract negotiated pursuant to this Section and term of any obligation incurred by a user agency to fund a performance contract shall be for a period equal to the lesser of 20 years or the average life of the equipment installed by the ESCO and shall contain a guarantee of energy savings, which guarantee shall, at a minimum, ensure total annual savings sufficient to fully fund any financing arrangement entered into pursuant to such performance contract.
- 3. Every performance contract negotiated pursuant to this Section shall contain the following clause: "The continuation of this contract is contingent upon the appropriation of funds by the legislature to fulfill the requirements of the contract. If the legislature fails to appropriate sufficient monies to provide for the continuation of the contract, the contract shall terminate on the last day of the fiscal year for which funds have been appropriated. Such termination shall be without penalty or expense to the agency, board or commission except for payments which have been earned prior to the termination date."
- 4. A user agency shall submit a negotiated performance contract to OCR for its review and approval. A user agency's submission of a negotiated performance contract shall be in accordance with the provisions of Title 39, Chapter 16 of the Louisiana Revised Statutes, the rules and regulations promulgated by OCR pursuant to that Chapter, and this Section.
- 5. At the time a performance contract is executed, the contracting ESCO shall submit a certified or cashiers check, payable to the Commissioner of Administration or his designated agent, in a sum equal to no more than 2 ½ percent of the total value of the proposed performance contract. The percentage of such total value and the means of calculating such total value shall be determined by the Commissioner of Administration or his designated agent and shall be set forth in the performance contract.

**D. Audits of Performance Contracts**

- 1. An ESCO that enters into a performance contract shall provide the user agency with all performance information and other reports required by the performance contract.
  - a. An ESCO's reports to the user agency shall conform with the standards of the International Performance Measurement and Verification Protocol.
  - b. An ESCO's reports to the user agency shall, in addition to fulfilling any other requirements set forth in its performance contract or in this Section, state the following:
    - i. the name of the user agency;
    - ii. the ESCO's name and address;
    - iii. whether the payment obligation under the performance contract is either:
      - (a). set as a percentage of the annual energy cost savings attributable to the services or equipment under the performance contract; or
      - (b). guaranteed by the ESCO to be less than the annual energy cost savings attributable to the services or equipment under the performance contract;

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- iv. the total annual savings guaranteed by the ESCO;
  - v. the total amount the user agency is required to pay under the performance contract and the term of the contract;
  - vi. the total amount paid to date by the user agency and the amount paid each year to date under the performance contract;
  - vii. any costs paid by the user agency which were associated with the set-up or maintenance of the performance contract or with repair or maintenance of the equipment used under the performance contract;
  - viii. the annual cost to the user agency of energy or other utilities beginning two years prior to operation of the performance contract and during the operation of the performance contract; and
  - ix. the annual energy cost savings each year, shown also as a percentage of the annual amount to be paid by the user agency under the performance contract. When calculating annual energy cost savings, maintenance savings shall be included. *Maintenance savings* means operating expenses eliminated and future capital replacement expenditures avoided by the user agency as a result of new equipment installed or services performed by the ESCO.
2. Upon a request by a user agency, by the Commissioner of Administration or his designated agent or by the legislative auditor, an ESCO shall provide any working documents, accounting records or other materials relating to costs, pricing or any other aspect of the ESCOs performance pursuant to a performance contract. Documents, records and other materials provided by an ESCO in accordance with this Section shall be subject to review and verification by a user agency, by the Commissioner of Administration or his designated agent, by the legislative auditor, or by an independent third party selected by a user agency, by the Commissioner of Administration or by the legislative auditor.
3. User agencies shall provide to the legislative auditor copies of all performance information and other reports submitted by an ESCO pursuant to a performance contract or this Section. The legislative auditor shall conduct periodic audits of performance contracts, both during the term of such performance contracts and upon the completion of such performance contracts.
- E. Retention by User Agencies of Net Savings Generated by Energy Cost Savings Measures
1. Pursuant to R.S. 39:254.B(1), a user agency that is able to demonstrate net savings from implementing an ECSM by means of a performance contract may retain its net savings relating to such ECSM, until the investment costs of implementing the ECSM are paid in full, and thereafter may retain one half of such net savings over the remaining useful life of the ECSM. Such retained net savings shall be from funds appropriated or allocated to the user agency for utility costs.
2. The Commissioner of Administration or his designated agent shall develop and promulgate such rules and regulations as are necessary to provide for the measurement and verification of net savings relating to ECSMs.
3. For the purposes of these rules, ECSM refers to a repair, equipment modification, procedure, course of action or other step taken which lowers energy costs.
4. For the purposes of these rules, *net savings* from the implementation of ECSMs shall be defined as measurable and verifiable energy cost savings that directly result from
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such implementation and shall be determined in accordance with the following provisions.

a. ESCOs shall employ energy savings measurement techniques that embody the best practical methods of determining net savings generated by the ECSMs to be evaluated. Such measurement techniques shall be fully defined and set forth in the RFP and performance contract that includes the ECSMs. In selecting a measurement technique, an ESCO shall consider the complexity of the ECSM to be evaluated and other factors that may affect energy use, such as changes in the mission of a facility, population, space utilization and weather.

b. Energy savings measurement may be based upon estimates, calculations or computer models, if metering is not practical.

c. Every RFP and performance contract shall set forth in detail the method to be used by an ESCO in order to determine the unit energy costs by which an energy baseline and energy savings are to be multiplied. For the purposes of these rules, an energy baseline shall be defined as the amount of energy that would be consumed annually without implementation of a given ECSM and shall be based upon historical metered data, engineering calculations, submetering of buildings or other energy-consuming systems, building load simulations, statistical regression analysis, or some combination of these methods.

d. The selection of every energy savings measurement technique and method of determining unit energy costs or energy baseline shall be subject to the approval of the Commissioner of Administration or his designated agent, who shall have the authority to modify such techniques and methods if he determines, in his sole discretion, that such modification is warranted by changed conditions or other circumstances affecting the accuracy or appropriateness of such techniques and methods.

e. Net savings must be real savings of money that the state of Louisiana either is currently spending or has budgeted to spend in the future. Such money must be available in the state's budget for payments against the performance contract involved. Net savings may be either recurring or one-time cost savings.

f. Examples of net savings shall include, but not be limited to, recurring operation, maintenance and repair tasks, which are currently performed by the state or its agents and which are directly related to the energy-consuming system affected by an ECSM. The savings associated with such

tasks shall be net savings, if the ESCO assumes such tasks, reduces the burden of such tasks or eliminates such tasks. The Commissioner of Administration or his designated agent shall determine whether an ESCO's action with respect to a given recurring task generates net savings and shall determine the value of such net savings.

g. Net savings may also include one-time cost savings of money budgeted by the state and available to fund a project or task that is made unnecessary by the implementation of an ECSM. The Commissioner of Administration or his designated agent shall determine whether an ESCO's action with respect to a given one-time project or task generates net savings and shall determine the value of such net savings.

h. Any utility company rebates or other incentives arising in connection with the implementation of an ECSM shall be the property of the user agency. An ESCO shall

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provide any assistance necessary in order to permit a user agency to apply for and receive such rebates or other incentives.

**F. Grandfathered Performance Contracts**

1. Notwithstanding any other provision of this Section, where an RFP or a proposed performance contract is exempt from the application of Subparagraphs (a) through (d) of R.S. 39:1496.1.E(1), the selected ESCO shall, at the time a performance contract is executed, submit a certified or cashiers check, payable to the Commissioner of Administration or his designated agent, in a sum equal to no more than 1 percent of the total value of the proposed performance contract. The percentage of such total value and the means of calculating such total value shall be determined by the Commissioner of Administration or his designated agent and shall be set forth in the performance contract.

2. Where an RFP or a proposed performance contract is exempt from the application of Subparagraphs (a) through (d) of R.S. 39:1496.1.E(1), such RFP or proposed performance contract shall not be subject to the application of Subsection A or B of this Section but shall be subject to the remaining provisions of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE:

Jerry W. Jones  
Director